



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/153052

PRELIMINARY RECITALS

Pursuant to a petition filed October 24, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 20, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in determining that petitioner is liable for a FoodShare overissuance in the amount of \$1,129 for the period from 9/1/12 to 12/31/12.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 11, 2013, the Department sent notice to petitioner informing her of a FoodShare overissuance claim in the amount of \$1,129 for the period from 9/1/13 to 12/31/13.

3. During the period of the overissuance claim, the agency had budgeted a household income of \$1,781. Petitioner's actual income during this period was much higher and she was, thus, ineligible for FS benefits.
4. Petitioner reported accurate income in December 2012.
5. Petitioner appealed the notice of overissuance.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

An FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook, App. 8.1.1.1. 130% of poverty was \$2,008 for a household of three.

An earnings statement submitted by petitioner (ex. #1) reflects an income in excess of the program limit. For example, in October 2012, petitioner's gross wages exceeded \$12,000. In December 2012, her gross wages were in excess of \$9,000. She received FS from at least as early as June 2012. The critical month in this case is August 2012. In August 2012, petitioner's gross wages were nearly \$7,000. Had petitioner reported this income, as she was required to do, the program would have terminated FS enrollment effective September 1, 2013. Therefore, all allotments paid to petitioner after that date (until she became eligible again in 2013) were overissuances.

At hearing, petitioner did not dispute the overissuance claim or the calculations. She stated that she merely wished to ensure that I had a copy of the accurate income. She submitted such income information provided by the employer and I am relying on that information in this Decision. Her income was four to five times the program limit. There is no question of the overissuance here. Even petitioner agreed "absolutely."

CONCLUSIONS OF LAW

The Department did not err in determining that petitioner is liable for a FoodShare overissuance in the amount of \$1,129 for the period from 9/1/12 to 12/31/12.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of December, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 11, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability