



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/153160

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on November 26, 2013, by telephone.

The issue for determination is whether the agency correctly determined an FS overpayment.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner receives FS. She has always reported her longstanding job with [redacted] [redacted].
3. Petitioner started a new job at [redacted] [redacted] [redacted] [redacted] in September, 2012, and thereafter she worked at both jobs. Petitioner did not report the new job to the FS agency.
4. Petitioner had an FS review in December, 2012. She did not report the second job.

5. Petitioner's income exceeded 130% of poverty beginning in October, 2012. The agency later discovered the second job and obtained a history of income from that job.
6. By a notice dated October 11, 2013, the agency informed petitioner that she was overpaid \$1,489 in FS from December 1, 2012 through June 30, 2013, claim no. [REDACTED].

### **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).

Petitioner testified that she thought she reported the new job, but I cannot find any record of the report. In fact, petitioner's on-line review in December, 2012 clearly mentioned only the [REDACTED] job. As I noted during the hearing, the agency must recover an overpayment even if it is caused by agency error. In this case, however, I cannot find that it was caused by agency error as there is no record that petitioner reported the new job until an agency worker discovered it while checking state wage records in May, 2013.

### **CONCLUSIONS OF LAW**

The agency correctly determined that petitioner was overpaid FS in 2012 and 2013 because she did not report an additional job and its income.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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, 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 4th day of December, 2013

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 4, 2013.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of [REDACTED] [REDACTED] Access and Accountability