



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/153162

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Sauk County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on December 17, 2013, by telephone. The record was held open 14 days for petitioner to provide additional information.

The issue for determination is whether petitioner was overpaid FS when he started a new job in late 2012.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Kay Kippley
Sauk County Dept. of Human Services
P.O. Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.
2. Petitioner received FS for a four-person household in 2012. His reported income was self-employment, listed as being \$1,984.92 per month. In December, 2012 the household received \$249 in FS.
3. Petitioner began a new job on November 26, 2012, with the first paycheck on December 7. His income from the job in December was \$2,415. FS closed effective January 1, 2013.

4. The income from the new job was not budgeted. The county discovered the new job in 2013 when petitioner completed a BadgerCare Plus review and noted the income on his review form.
5. The county sent the case for a possible overpayment. It added the \$805 employment income to petitioner's self-employment income and determined that the household was overpaid \$163 in FS in December, 2012.
6. By a notice dated September 23, 2013 the county informed petitioner that he was overpaid the \$163 in FS, 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 he remembered speaking to an agency worker when he started the new job. That is possible, but there is no record of any report in the system. He clearly did not intend to hide the new job because he was the person who reported it at his later review. Nevertheless, the income from the job was not budgeted.

That said, petitioner still was not overpaid FS in December, 2012. The verification from his new employer stated that he started the job on November 26. He thus was not required to report the change until December 5. FS Handbook, App. 6.1.1.1. The change would not have occurred until January, 2013, and since petitioner did not receive FS in January, there was no overpayment that month. See FS Handbook, App. 6.1.3.6. There was no overpayment in December because the FS for that month were already issued before the required report date.

CONCLUSIONS OF LAW

Petitioner was not overpaid FS in December, 2012 because his report of new employment would not have been required until December 5, 2012, and thus any decrease in FS would not have been effective until January 1, 2013.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind FS overpayment claim no. [REDACTED] and to cease recovery of it. The county shall do so within 10 days of this decision.

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 6th day of January, 2014

\sBrian C. Schneider
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 January 6, 2014.

Sauk County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability