FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/153715

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on February 5, 2014, by telephone. A hearing set for January 7, 2014 was rescheduled at the petitioner's request.

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

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W. Vliet Street
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. In 2013 petitioner received FS for a two-person household – herself and a daughter D.M. A younger daughter A.M. was in the household but was ineligible for FS because she was a full-time student at [redacted] University. Both daughters were under age 22.

3. In January, 2013, petitioner filed a six-month report showing the only income to be for A.M. Verification showed that A.M. worked 15 hours per week. That number of hours was insufficient to make A.M. eligible for FS, so the income was not budgeted for petitioner's FS.

4. FS were determined based only upon $339 monthly unearned income (unemployment compensation and child support) for a two-person household.

5. In the fall, 2013, the agency investigated petitioner's household information. It found that D.M. had been working since March, 2013 at [redacted], and that beginning in February, 2013, A.M. worked more than 20 hours per week and also had unreported unemployment compensation.

6. The agency requested check stubs for both daughters but only received some of A.M.'s stubs. Therefore the agency estimated monthly income by taking quarterly income reported to the state and dividing by three.

7. By a notice dated November 19, 2013, the agency informed petitioner that she was overpaid $1,672 in FS from March through September, 2013, claim no. [redacted]. The overpayment was determined by adding A.M. to the case, budgeting all income, and determining the amounts of FS that the 3-person household would have received. I note that in the calculation the unearned income was reduced from $339 to a lesser amount because unemployment actually stopped except for June, 2013.

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 important component of this case is A.M.'s status. A person who is enrolled at least half time in higher education is ineligible for FS unless she meets a specific exemption criterion. 7 C.F.R. §273.5(a); FS Handbook, Appendix 3.15.1. One of the exemptions is if the person is working more than 20 hours per week. 7 C.F.R. §273.5(b)(5). When petitioner filed her report in January, 2013, A.M. was listed as working 15 hours per week and thus was excluded from the FS unit. As it turned out A.M. actually began to work more than 20 hours per week in February, and thus she should have been added to the unit in March. Adding A.M. to the unit also meant adding her income to the unit's FS budget.

Petitioner's primary two arguments against the claim were that the agency budgeted her self-employment income and that the agency failed to give her a full shelter deduction. However, no self-employment was budgeted either in the original calculation or the overpayment calculation. In addition petitioner received the maximum shelter deduction, which in 2013 was limited to a maximum of $469 per month. See FS Handbook, App. 8.1.3

I have reviewed the calculations and find them to be accurate. Petitioner now has provided complete check stubs, and although there were slight variances in the income amounts as opposed to the averaging done by the agency, the variances did not result in any substantial change in the amount. For example, in the overpayment calculation for March the agency budgeted $1,050 income for A.M. and $81 for D.M. for a total of $1,131. Actual income for March was $1,250 for A.M. and $243 for D.M. for a total of

$1,493. In April the agency budgeted $712 for A.M. and $1,103 for D.M. for a total of $1,815. Actual income was $821 for A.M. and $1,016 for D.M. for a total of $1,835. In later months the daughters' income was higher, often over $2,000. Although the agency used an average of the quarterly earnings, there is not a major difference in the result using the actual income amounts provided by petitioner after the calculations were completed.

The upshot is that petitioner's FS from March until September, 2013 were based on $339 monthly income. In actuality petitioner's daughters were both working and receiving gross income of approximately $2,000 per month during the period. Clearly that disparity resulted in the household receiving more FS than it would have received if correct income had been budgeted.

CONCLUSIONS OF LAW

Petitioner was overpaid FS totaling $1,672 in 2013 because she failed to report income received by her daughters who lived in the household.

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, 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 14th day of February, 2014

\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 February 14, 2014.

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