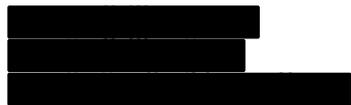




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/153720

PRELIMINARY RECITALS

Pursuant to a petition filed November 22, 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 January 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits and, if so, whether the amount of the overpayment is correct.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated October 17, 2013. It informed Petitioner that he had been overissued FoodShare benefits for the period from January 1, 2013 through July 31, 2013 in the amount of \$1216.00. This is claim number [redacted].
3. The basis for this FoodShare overissuance claim was client error. Petitioner did not report that his income had exceeded 130% of the Federal Poverty Level during the time period noted at Finding #2.

4. Petitioner had the following gross earned income in the following months:

11/12 - \$1547.00
 12/12 - \$2123.00
 01/13 - \$1408.00
 02/13 - \$1716.00
 03/13 - \$2178.00
 04/13 - \$1672.00
 05/13 - \$ 872.00
 06/13 - \$1727.00
 07/13 - \$1611.50.

5. Petitioner's household size is 1. He is under age 60 and has not been determined to disabled by the SSA. He was given credit in the overpayment calculation for a standard deduction of \$149.00, rent of \$290.00, a utility allowance of \$446.00 and child support of \$330 per month.
6. 130% of the Federal Poverty Level during the period involved here was \$1211 from October 1, 2012 through September 30, 2013.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 *Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH), Appendix 7.3.2*. Overpayments due to "client error" may be recovered for up to six years after discovery. *FSH, 7.3.2.1*. The overpayment alleged here is a client error. Regardless, the overpayment alleged is under 12 months from the discovery of the overpayment so must be recovered regardless of whose error created the overpayment.

Further, in an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

A FoodShare recipient with earnings is required to report changes in household income if it exceeds 130% of the FPL. *FSH, §6.1.1.2*. Also, if a change becomes known to the agency it must act on that information. *Id.* As noted in Finding #6, 130 % of the FPL for a household of one was \$1211.00. Petitioner's income was never less than that except for May 2013 during the period involved here. When Petitioner's November 2012 income exceeded \$1211 it should have been reported by December 10, 2012. At least one Notice of Decision, dated April 17, 2012 informed Petitioner of this (Exhibit # 5).

I have reviewed the overpayment worksheets as well as the income information and find one potential error. The income reported for Petitioner by the employer for January 2013 was \$1408 (Exhibit # 10) but the overpayment worksheets (Exhibit # 7) used income of \$1848.00 as January 2013 income. The agency will have to redetermine the January 2013 overpayment amount and adjust the overall overpayment if necessary.

CONCLUSIONS OF LAW

That the evidence offered by the agency is sufficient to demonstrate that Petitioner was overpaid FoodShare benefits as alleged herein and that the law mandates recovery but evidence is not sufficient to show that the amount of the overpayment for January 2013 is correct.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to take the steps necessary to redetermine the amount of the overpayment alleged here by recalculating the amount of the overpayment for January 2013. A new notice must be sent to Petitioner and he may appeal that new determination for January 2013. This must be done within 10 days of the date of this Decision.

In all other respects, 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 Milwaukee,
Wisconsin, this 15th day of January, 2014

\sDavid D. Fleming
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 15, 2014.

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