FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/154011

PRELIMINARY RECITALS

Pursuant to a petition filed October 29, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Sauk County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on January 21, 2014. The overpayment at issue here was previously the subject of a fair hearing; following a decision and remand of the overpayment in the previous case, the county agency redetermined the overpayment and issued new notices to petitioner. Petitioner timely appealed the redetermined overpayment.

The issue for determination is whether the respondent correctly established an overpayment of FS to petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Julie Arendsee
Sauk County Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Sauk County.
2. Petitioner is a member of an FS household of four.
3. Respondent notified petitioner that it established an overpayment of FS benefits to petitioner in the amount of $3,141.00 from October 8, 2012, through June 30, 2012.
4. Petitioner timely appealed from that notice on June 26, 2013.
5. Following remand, the respondent recalculated the overpayment based upon available wage records, and established an overpayment of FS benefits to petitioner in the amount of $2,683.00.
6. Petitioner timely appealed the recalculated overpayment amount.

DISCUSSION

Federal regulations require state agencies to "establish a claim against any household that has received more food stamp benefits than it is entitled to receive." 7 CFR § 273.18(a). This means that the agency must recover all overpaid benefits regardless of who is at fault. FoodShare eligibility and the amount of benefits depend upon income and the number of persons in the household. The county agency contends that the petitioner and her family received $2,683.00 more in FoodShare benefits than they were entitled to from October 8, 2012, through June 30, 2013, as household income exceeded program limits.

In this matter, the *FoodShare Wisconsin Handbook,* § 7.3.2.1. gives the following instructions when recovering an overpayment due to unreported income:

> When determining if an overissuance occurred due to an unreported increase in total gross monthly income, compare the total actual unconverted income amount to the income reporting limit for the household size to determine if the income should have been reported. Enter the converted income amount to determine ongoing benefit eligibility. Use the income and expenses reported or required to be reported for each month of the adjustment period. In claim calculations, disregard income that was not previously reported and was not required to be reported.

This matter has been appealed previously; in the earlier matter, the overpayment was remanded to the respondent to redetermine the overpayment based upon petitioner's actual household income. The redetermination resulted in a decrease in the amount of the overpayment, but petitioner alleges that there are still problems with the income calculations specific to the months of November, 2012 and February, 2013.

At hearing respondent explained that the November, 2012, household income calculation was missing a paystub for November 23, 2012. As such, that pay period was averaged. Petitioner conceded the oversight in not providing a check for that pay period.

The calculations for household income for February, 2013, were also questioned by petitioner. The respondent conceded an error in those calculations. As such, this matter will be remanded to the respondent to recalculate petitioner's household income for February, 2013, and determine to what extent, if any, the recalculated amount will affect the overpayment.

CONCLUSIONS OF LAW

The respondent has not established that it properly calculated petitioner's household income for the month of February, 2013.

THEREFORE, it is **ORDERED**

That this matter (Claim No. [redacted]) shall be remanded to the respondent to (1) review and re-calculate petitioner's household income for the month of February, 2013; and (2) re-calculate the overpayment based upon petitioner's correct February, 2013, income. After the review and re-determination, respondent shall provide written notice to the petitioner, including new appeal rights. All actions required under this Order shall be completed within 14 days following issuance 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 14th day of February, 2014

_____

\sPeter McCombs
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.

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