



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/154119

PRELIMINARY RECITALS

Pursuant to a petition filed December 13, 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 14, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services correctly determined that Petitioner was over-issued FoodShare benefits between September 1, 2010 and October 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 2, 2013, the agency sent Petitioner for Notifications of FoodShare Overissuance:
 - Claim number [REDACTED] – \$3560.00 for the period of 09/01/10 to 8/31/11
 - Claim number [REDACTED] - \$4303.00 for the period of 09/01/11 to 08/31/12
 - Claim number [REDACTED] - \$4285.00 for the period of 09/01/12 to 08/31/13
 - Claim Number [REDACTED] - \$734.00 for the period of 09/01/13 to 10/31/13

(Exhibit 3)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 13, 2013.
4. On September 23, 2009, Petitioner completed a review, in person, and indicated that she was still employed with [REDACTED]. No other employment was recorded as being reported at that time. (Exhibit 2, pg. 23)
5. On June 8, 2010, the agency sent Petitioner a notice, listing income from [REDACTED] only. (Exhibit 3, pg. 134)
6. On June 21, 2010, Petitioner contacted the agency and reported an increase in the number of hours she was working. No new employment was recorded as being reported at that time. (Exhibit 2, pg. 23)
7. Petitioner started working for the [REDACTED] [REDACTED] [REDACTED] [REDACTED] in September 2010. She received her first check on September 30, 2010. (Exhibit 2, pg. 31)
8. Petitioner continued to work for [REDACTED] through at least October 15, 2013. (Exhibit 2, pg. 28)
9. Petitioner never reported the employment with [REDACTED], because she was not sure if it was secure. (Testimony of Petitioner)
10. Petitioner continued to work for [REDACTED] during the time in question. (Exhibit 2, pgs. 32-76)
11. Petitioner's assistance group size is 2; no one in her household is elderly (over age 60), blind, or disabled. (Exhibit 2, pg. 9, pg. 11)

DISCUSSION

Federal law generally requires that all FS overpayments be recovered. Those regulations provide, in relevant part, as follows:

Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18(a); also see *FoodShare Wisconsin Handbook (FSH)* § 7.3.1.1.

The overissuance can be caused by 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 C.F.R. § 273.18(b), emphasis added; see also *FoodShare Wisconsin Handbook, App. § 7.3.2.1*. As such, it does not matter whose error caused the overpayment; it must be recouped.

In an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of prove, by a preponderance of the credible evidence, that it correctly determined that an overpayment occurred and that it correctly calculated the overpayment.

At the hearing Petitioner did not dispute that an over-issuance of FoodShare benefits occurred, because she failed to report income from her job at [REDACTED], nor did she dispute the agency’s calculation of her income or the resulting monthly overpayment amounts. However, it appears the agency made an error with regard to when the overpayment period began.

As there is no evidence to indicate that Petitioner’s household included an elderly, blind or disabled (EBD) member, her obligation to report changes is dictated by section 6.1.1.2 of the Food Share Wisconsin Handbook:

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units [i.e., household’s which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% ([8.1.1](#)) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...

FSH, §6.1.1.2. Emphasis added

This follows Federal law which directs that States may:

“...require households with income that are assigned 6-month or longer certification periods to *report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.*” 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

Any overpayments caused by a failure to timely report a change are to be calculated in part, as follows:

7.3.2.1 Client and Non-client Error

Consider the [FS](#) group’s reporting requirements when calculating the overissuance. Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported.

...

FSH, §7.3.2.1; emphasis added.

In September 2010, Petitioner received three pay checks. The first two checks were from [REDACTED]. The first one, dated September 9, 2010 was for \$564.40. The second one was dated September 23, 2010 and was for \$424.50. (Exhibit 2, pg. 48) The last check was from [REDACTED] for \$960.00 dated September 30, 2010. (Exhibit 2, pg. 31) As such, her total income for September was: $\$564.40 + \$424.50 + \$960 = \1948.90 .

In September 2010, 130% of FPL for a household of two was \$1579. (FSH §8.1.1) Petitioner's income of \$1948.90, exceeded 130% the FPL threshold. As such, she was obligated to report the increase in income from the September 30, 2010 check that she received from [REDACTED]. However, per FSH, §6.1.1.2, she was not obligated to report this change in income until October 10, 2013. Consequently, there was no overpayment of benefits for September 2010, because an overpayment cannot be based upon income that the Petitioner was not required to report in September. *See FSH §7.3.2.1*

Had Petitioner timely reported the change by October 10, 2013, the change would not have affected Petitioner's benefits until November 2010, because the agency would still have had to give 10-days notice of any adverse action and because FoodShare benefits are issued on a calendar month basis. *See FSH §§6.3.1 and 3.4.1*. As such, there was no overpayment of benefits for October, either.

The overpayment period for Petitioner began November 1, 2010. As such, the agency will have to adjust the overpayment amount.

CONCLUSIONS OF LAW

1. The agency correctly determined that Petitioner was over-issued FoodShare benefits between November 1, 2010 and October 31, 2013.
2. No overpayment occurred for the months of September and October 2010.

THEREFORE, it is

ORDERED

That the agency amend claim number [REDACTED] to reflect an overpayment period of 11/01/10 to 8/31/11 only. The agency shall take all administrative steps to complete this task within ten days of this decision.

With regard to claim numbers [REDACTED] - \$4303.00 for the period of 09/01/11 to 08/31/12, [REDACTED] - \$4285.00 for the period of 09/01/12 to 08/31/13, and [REDACTED] - \$734.00 for the period of 09/01/13 to 10/31/13, the 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 3rd day of
February, 2014.

\sMayumi M. Ishii
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 3, 2014.

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