



FH

[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed January 07, 2014, 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 February 13, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$2,630 for the period of March 1, 2013 – July 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: Jose Sylvestre
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's household size is three.
3. On January 1, 2013, the Petitioner started employment with [REDACTED]. She did not report her employment to the agency.

4. On January 23, 2013, the Petitioner submitted a FS renewal to the agency. She did not report her employment.
5. On February 4, 2013, the Petitioner completed a FS interview with the agency. She did not report her employment.
6. On February 5, 2013, the agency issued a Notice of Decision to the Petitioner informing her that she would receive \$526/month effective March 1, 2013. The notice informed her that this was based on \$0 reported household income. The notice also informed the Petitioner that if her total gross monthly income exceeds \$2,069, she must report it to the agency by the 10th day of the next month.
7. In February, 2013, the Petitioner's actual wages were \$2,322.25. In March, 2013, the Petitioner's actual wages were \$2,173.50.
8. On April 29, 2013, the Petitioner contacted the agency and reported she is looking for work but has not found a job.
9. On June 20, 2013, the Petitioner reported to the agency that she is working.
10. On July 17, 2013, the agency processed an employer verification indicating Petitioner started working on January 1, 2013, 40 hours/week @ \$19.03/hour. The case was referred for an overpayment.
11. On September 25, 2013, [REDACTED] submitted wage verification to the agency.
12. On January 31, 2014, the agency issued a notice to the Petitioner that FS overissuance claim # [REDACTED] in the amount of \$2,556 has been closed and a new claim will be established.
13. On February 3, 2014, the agency issued a Notification of FS Overissuance informing the Petitioner that the agency intends to recover an overissuance of FS benefits in the amount of \$2,630 for the period of March 1, 2013 – July 31, 2013.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS 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 C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years prior to discovery. *Id.*

"Discovery" is "the date that the ESS [agency] became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the agency became aware of a potential for an overissuance in or about September, 2013. The agency alleges client error in failing to accurately report employment and income, resulting in the overissuance. I conclude that there was an overissuance as a result of client error. Therefore, the agency may recover for the period of March 1, 2013 – July 31, 2013.

Petitioner had actual wages that exceeded her reporting requirement of \$2,069 in February, 2013. Specifically, the verification the agency received from her employer is evidence that she received \$2,322.25 in actual gross wages in February. Therefore, she was required to report her earned income to the agency by March 10, 2013. The evidence from the Petitioner's employer shows that she had gross wages exceeding the reporting requirement in each month from February – July, 2013. She did not report

her employment until June 20, 2013 and the agency did not get verification of her actual wages until September 25, 2013. The overissuance of FS benefits from March 1, 2013 – July 31, 2013 was the result of the Petitioner's failure to report her employment and income to the agency.

The Petitioner testified that she reported her employment in January, 2013 when she sent her letter of employment to the agency and in the phone interview of February 4, 2013. She testified that she faxed information regarding her wages after that. She further testified that she was told by an agency worker not to report her wages and employment on her renewal. The Petitioner's testimony is not consistent with the agency's evidence in the case comments regarding when the Petitioner reported her employment. The Petitioner was unable to provide any additional proof that she submitted information to the agency. Even if she did submit the information and the agency erred in not updating her case, the agency would still be required to recover the overissuance.

I reviewed the agency's calculations of the overpayment and conclude that the calculations are accurate. Therefore, the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$2,630 for the period of March 1, 2013 – July 31, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$2,630 for the period of March 1, 2013 – July 31, 2013.

THEREFORE, it is

ORDERED

That the Petitioner's 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 5th day of March, 2014

\sDebra Bursinger
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 March 5, 2014.

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