FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

AMENDED DECISION

FOP/154858

PRELIMINARY RECITALS

Pursuant to a petition filed January 17, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Vernon County Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on February 18, 2014.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Bob Uebele
Vernon County Human Services
318 Fairlane Drive, Suite 100
Viroqua, WI 54665-6131

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Vernon County, and the primary person ins a FS assistance group including her husband and three children.
2. At her annual renewal on December 7, 2011, petitioner reported that the household income consisted of her husband's income and child support for one child.

3. On December 5, 2012, respondent received a State Wage Income Collection Agency (SWICA) alert indicating that petitioner had income for the 4th quarter of 2011, as well as the 1st and 2nd quarters of 2012, from [redacted] c/o [redacted].

4. Petitioner did not provide requested verification of this income, and the respondent proceeded to calculate an overpayment of FS benefits as a result of the newly identified household income.

5. On December 19, 2013, the respondent issued a Notification of FS Overissuance to the petitioner indicating its determination that petitioner was overpaid FS in the amount of $1,824.00, covering the period of January 1, 2012 to June 30, 2012.

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 after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

During the hearing, the respondent presented a clear summary statement along with relevant FS overpayment notices and worksheets which established the petitioner's FS overpayment. See, Exhibit 2. In contrast, the petitioner was unable to establish any error in the calculation of the FS overpayment. She noted that she did, in fact, report her income information to a county worker, but there was no evidence of that found in the record. Even if I were to find that the petitioner had timely reported her income, overpayments due to "agency error" may be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Because the county discovered the petitioner's FS overpayment during December of 2012, the county would arguably be able to recover the FS overpayment retroactive to January of 2012. The overpayment period at issue here falls within this 12 month period.

Whether or not the agency erred here or the petitioner erred, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless **of whose error caused the overpayment to occur**: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . . "7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, 7.3.2.1. Accordingly, for the above reasons, the county agency is correctly seeking recovery of a FoodShare overpayment to the petitioner during the period of January 1, 2012 to June 30, 2012, due to an error in budgeting petitioner's earned income, which, when correctly budgeted, resulted in reduced FS benefits for petitioner's household for that period.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a FoodShare overpayment to the petitioner during the period of January 1, 2012 to June 30, 2012, due to an error in budgeting petitioner's earned income, which, when correctly budgeted, resulted in reduced FS benefits for petitioner's household for that period.

THEREFORE, it is **ORDERED**

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the the law of if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 1st day of April, 2014

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\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 April 1, 2014.

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