



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/154993

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Wisconsin Department of Health Services-Milwaukee Enrollment Services, in regards to a determination that the petitioner was overpaid FoodShare benefits (FS), a telephone hearing was held on April 24, 2014, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 10 days for the submission of additional information. A hearing set for February 26, 2014, was rescheduled at the petitioner's request. The petitioner failed to appear for a hearing set for March 26, 2014, and the appeal was dismissed as abandoned on March 27, 2014. On March 28, 2014, the petitioner filed a rehearing request, which was granted on March 31, 2014.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid \$1,831 in FS in the period of February – May, 2013, due to unreported earned income.

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: Pang Thao Xiong, HSPC
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. He was the casehead of a 2 person FS household composed of himself and his minor son, [redacted], in November, 2012.

2. In January, 2013, the petitioner filed a six month report form that informed the Department that his adult niece, ██████████ ██████████, had moved into his household. The SMRF indicated that she did not have any income, and no other changes were reported in the SMRF.
3. On July 29, 2013, the Department received the petitioner's re-certification application at review and reviewed the State Wage Record and Unemployment Compensation data; and learned for the first time that the petitioner had been employed as ██████████ ██████████ in the 4<sup>th</sup> Quarter of 2012, and the 1<sup>st</sup> Quarter of 2013; and that ██████████ had been employed at ██████████'s ██████████ in the 1<sup>st</sup> Quarter of 2013 as well. Neither job, and wages, had been reported or verified to the agency at any time prior. When questioned at this time, the petitioner reported that the job at ██████████'s had ended. Verification was requested for both jobs.
4. Subsequently, on August 9, 2013, ██████████ moved out and this was reported to the agency on August 16, 2013. On that same date, the petitioner provided a letter from his employer stating that his work ended on May 18, 2013; but no pay stubs or wages were provided for either job, petitioner's or ██████████'s, as requested.
5. On September 13, 2013, the agency mailed verification requests for wage information and employment information from ██████████ and ██████████'s ██████████, which was due by September 23, 2013.
6. On September 19, 2013, wage information was received from ██████████'s ██████████ for ██████████, that indicated that she had worked part time from early January to late February, 2013, with no wages as of February 10<sup>th</sup>, and that she apparently quit and did not return after that date. See, Exhibit #1, attached EVR from ██████████ ██████████, dated 9/18/13. The petitioner provided only a letter dated May 25, 2013, from ██████████ ██████████ LLC, demanding he pay \$350 for an accident he had on April 29, 2013, and noting that he quit voluntarily on May 18, 2013; no more and no less information was included about his wages or start date. No other verification request was returned by ██████████.
7. On October 3, 2013, the Department issued a Notification of FS Overissuance and Worksheets to the petitioner informing him that the agency had determined that he had been overpaid \$1,831 between February 1 – May 31, 2013, due to a client error in failing to report earned income. A duplicate addressed to ██████████ ██████████ informing her that she was liable for this overpayment was also issued on that date.
8. On January 21, 2014, the petitioner first appealed the agency overpayment determination to the Division of Hearings & Appeals.
9. No evidence in the record indicates that the petitioner did not receive the Notification of FS Overissuance and Worksheets mailed to him on October 3, 2013, as described in Finding of Fact #7, above.

### DISCUSSION

An appeal concerning a negative action against a FS household, like the instant overpayment determination, must be filed within 90 days of the effective date of the action. 7 C.F.R. § 273.15(g). Here, the instant appeal was filed 110 days after the effective date. The petitioner at no time asserted that he did not receive the Notice and Worksheets, or that there was a delay in delivery. While the issue of the timeliness of this appeal was not raised specifically on the record, I must nonetheless consider whether I have jurisdiction under law. If I do not, I lack the power to reach the merits of the petitioner's appeal. On this record, there is evidence that the Notice and Worksheets were mailed to the petitioner on October 3, 2013, by regular mail, to his address then on file with the agency. Thereafter, the petitioner received it. I can only conclude that this appeal is untimely and must be dismissed on these facts.

However, even were I to assume *arguendo*, that jurisdiction were present to review the overpayment, I would sustain it. The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

The petitioner worked in the tested period, and his work ended on May 18, 2013, not April as he testified. The employer letter is the best evidence that this is so. The niece worked in January through early February, and her employer reported her earnings, ultimately. The petitioner did not report the jobs timely to the agency. No credible evidence supports or shows that he did, and he still has not even though the record was held open for him to do so. The agency used the actual income received by the niece in the overpayment computations, as verified by her employer. The agency used the average income of the petitioner based upon his State Wage Record for the time period tested.

Had I reached the merits, I have reviewed the calculations, and would find them to be accurate.

The instant appeal will be dismissed in the alternative form. This means that I find it untimely; and in the alternative, if it were shown to be timely, then on the merits the overpayment determination is fully sustained by the preponderance of the evidence in the record.

### CONCLUSIONS OF LAW

That the petition for review was untimely; and in the alternative, even if it were timely, the petitioner was overpaid FS totaling \$1,831 between February 1 – May 31, 2013, because he failed to report earned income for himself and his adult niece that resulted in the household being overpaid this amount of FS when budgeted correctly.

**NOW, THEREFORE, it is ORDERED**

That the petition is 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 law or 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 7th day of May, 2014

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\sKenneth D. Duren, Assistant Administrator  
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 May 7, 2014.

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