



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155038

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 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 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services correctly determined that the Petitioner was overissued FoodShare benefits.

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: Pang Thao-Xiong
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 4, 2013, the agency sent Petitioner two Notifications of FoodShare Overissuance. The first was claim number [REDACTED], indicating that Petitioner was overissued FoodShare benefits in the amount of \$1,413.00 for the period of May 2, 2011 to October 31, 2011. (Exhibit

- 2, pg. 78) The second was claim number [REDACTED], indicating that Petitioner was overissued benefits in the amount of \$3226.00 for the period of January 19, 2012 to June 30, 2012. (Exhibit 2, pg. 82)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 27, 2014. (Exhibit 1)
 4. Petitioner completed an on-line ACCESS application on May 2, 2011. In that application, Petitioner indicated that she was working at [REDACTED] 32 hours per week at \$13.00 per hour. (Exhibit 2, pgs. 7-21). This would work out to be:

32 hours per week x \$13.00 per hour = \$416 income per week
 \$416 x 4.3 average weeks per month = \$1788.80 per month.

5. In the May 2, 2011 application, Petitioner also reported that her husband was receiving Unemployment Insurance Benefits (UIB) in the amount of \$255 per week. (Id.)
6. On May 23, 2011, the Petitioner the Petitioner went to the agency and indicated that her hours had decreased due to a medical leave. The Petitioner provided 30 days-worth of pay stubs. (Exhibit 2, Case Comments –pg. 115)
7. According to the Work Number Website, as of May 23, 2011, 30-days worth of paystubs would have revealed the following information regarding Petitioner's gross income:

A check dated 4/29/11 for \$530.25
 A check dated 5/06/11 for \$449.88
 A check dated 5/13/11 for \$479.75
 A check dated 5/20/11 for \$759.75

(Exhibit 2, pg. 4)

8. On May 24, 2011, the agency sent Petitioner a notice indicating that Petitioner would be receiving \$262 in FoodShare benefits for May 2011 and that she would get \$271.00 per month for June 2011 forward. The notice also indicated that Petitioner's FoodShare allotment was based upon income of \$221 per week from [REDACTED] corporation ($\$221 \times 4.3$ average weeks per month = \$950.30) and \$1096.50 per month from her husband's unemployment insurance benefits. (Exhibit 2, pgs. 24-29)
9. Petitioner's husband UIB benefits were actually \$339 per week ($\$339 \times 4.3 = \1457.70). The Petitioner did not include a child support deduction when calculating *gross* income. (Exhibit 2, pg. 63)
10. Petitioner's spouse began working again during the third quarter (July-September) of 2011. (Exhibit 2, pg. 5)
11. Petitioner's benefits closed October 2011, because she did not complete her six-month report form. (Exhibit 2, pg. 116)
12. On January 19, 2012, the Petitioner called the agency to request FoodShare benefits. (Exhibit 2, pg. 116)
13. The agency did not pend the case for verification of income. (Id.)
14. Petitioner's husband was working during the first and second quarters of 2012. (Exhibit 2, pg. 50)
15. On January 20, 2012, the agency sent Petitioner a notice indicating that she was approved for \$261 in benefits for the remainder of January 2012 and that she would receive \$624 in benefits per month, thereafter. The notice indicated that the allotment calculation was based upon income from [REDACTED] in the amount of \$221 per week. (Exhibit 2, pgs. 92-96). This would have worked out to be: $\$221 \times 4.3$ average weeks per month = \$950.30 per month.

16. On June 5, 2012, the Petitioner completed an on-line renewal for FoodShare benefits. (Exhibit 2, pg. 117.
17. On June 6, 2012, the agency sent Petitioner a notice indicating that she would receive \$469 in expedited FoodShare benefits for June 2012. The notice indicated that this was based upon a household income of \$1290 per month. (Exhibit 2, pgs. 99-103)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare 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), emphasis added; see also *FoodShare Wisconsin Handbook (FSH)*, § 7.3.1.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

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 overcome the county agency’s evidence of correct action.

In the case at hand, the agency asserts that Petitioner was over-issued FoodShare benefits between May 2, 2011 and October 31, 2011, because she underreported her earned income at the time of application, she underreported her husband’s unemployment insurance benefits at the time of application and because she subsequently failed to report her husband’s income when he returned to work.

The agency also asserts that the Petitioner was over-issued FoodShare benefits between January 19, 2012 to June 30, 2012, because she underreported her income and did not report the earned income of her husband.

Claim number [REDACTED] *– May 2, 2011 through October 31, 2011*

A. Petitioner’s Earned Income

The agency did not provide copies of the paystubs that the Petitioner submitted at the time of her application in May 2011. However, looking at the information from the Work Number website, in certainly appears that Petitioner received more income than the agency counted. Indeed, the agency calculated a weekly income of \$221 per week for Petitioner, but the Work Number Website indicates that Petitioner had no paycheck less than \$449.88 between April 29, 2011 and May 20, 2011. (Exhibit 2, pgs. 24-29 and Pg. 40) Even if one looks at the Work Number website and reviews Petitioner’s April income only, Petitioner had no paycheck in April with less than \$312.00 of gross income. (Exhibit 2, pg. 40)

Thus, it is more likely than not, that an overpayment did occur between May 2, 2011 and October 31, 2011.

B. Petitioner’s Spouse’s Unemployment Benefits (UIB)

In her application, the Petitioner reported that her husband was receiving \$255 in UIB. (Exhibit 2, pg. 12) While this was the net amount her husband received, the gross amount was actually \$339 per week, of which \$84 was withheld to pay child support. (Exhibit 2, pg. 63) Thus, the Petitioner did under report her husband’s UIB, which also contributed to the overpayment beginning in May 2011.

I note, however, that the agency erred in its overpayment calculation because it neglected to allow a deduction for child support payments made by Petitioner's spouse in the amount of \$84 per week when calculating the allotment amount. (Exhibit 2, pg. 63 and pg. 80-81)

C. Petitioner's Spouse's Earned Income

Petitioner's spouse worked during the third and fourth quarter of 2011. (Exhibit 2, pg. 50 and pgs. 57-58) During the third quarter (July, August, September) his income averaged \$1266.66 per month. (Id.) During the fourth quarter (October, November December) his income averaged \$681.66 per month. (Exhibit 2, pg. 50)

Petitioner did not report this income to the agency and needed to do so, if it put her household income over the 2011, 130% of the Federal Poverty Limit of \$2389 per month for a family of four. *See FSH §6.1.1.2 and §8.1.1.1*

In determining the overpayment amount, this income should only have been used for the month in which it should have been counted. For example, if this income put Petitioner's household over the 130% FPL limit in July 2012, it needed to be reported by August 10, 2012, which meant that only September benefits would be affected and the income should only be counted when determining the overpayment amount for September 2012 NOT for July or August 2012. *See FSH §7.3.2.1*

Claim Number [REDACTED] - January 19, 2012 to June 30, 2012

A. Petitioner's Earned Income

The agency conceded that it erred by failing to pend Petitioner's case for verification of income when she called on January 19, 2012 to request FoodShare benefits. However, looking at the information from the Work Number website, it certainly appears that Petitioner received more income than the agency counted. Indeed, the agency calculated a weekly income of \$221 per week for Petitioner, but the Work Number Website indicates that Petitioner had no paycheck that was less than \$561.24 in the four weeks preceding Petitioner's January 19, 2012 request for benefits. (Exhibit 2, pg. 40 and pgs. 92-96)

A. Petitioner's Spouse's Earned Income

Petitioner's spouse worked during the first two quarters of 2012. (Exhibit 2, pg. 50) During the first quarter (January, February, March) his income averaged \$1806.66 per month. (Id.) During the second quarter (April, May, June) his income averaged \$2775.62 per month. (Exhibit 2, pg. 50)

It is clear that the agency did not include this income when determining Petitioner's FoodShare benefits. (Exhibit 2, pgs. 92-97) As such, this contributed to the overissuance of FoodShare benefits to the Petitioner.

CONCLUSIONS OF LAW

1. The agency correctly determined that Petitioner was over-issued FoodShare benefits for May 2, 2011 through October 2, 2011.
2. The agency did not correctly determine the over-issuance amount, because it failed to allow an \$84.00 per week deduction for child support during the time Petitioner's spouse received UIB.
3. The agency correctly determined that Petitioner was over-issued FoodShare benefits from January 19, 2012 through June 30, 2012.

THEREFORE, it is

ORDERED

1. That the agency recalculate the overpayment amount for the period of May 2, 2011 and October 2, 2011, allowing for \$84.00 per week in child support, for those months that Petitioner's spouse received unemployment benefits. In addition, the agency will review its overpayment calculation to make sure it complies with FHS §§ 6.1.1.2 and 8.1.1.1. The agency shall then amend claim number [REDACTED] to reflect the correct overpayment amount. The agency shall take all administrative steps to complete this task within ten days of this decision.
2. With regard to claim number [REDACTED], the petition 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 18th day of March, 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 March 18, 2014.

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