



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155148

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Northern IM Consortium to recover FoodShare benefits (FS), a hearing was held on March 5, 2014, at Crandon, by telephone.

The issue for determination is whether petitioner was overpaid FS when she failed to report a return to work.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Beulah Garcia
Northern IM Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Forest County.
2. Petitioner received FS with her husband and four children. In May, 2012, the household filed a six-month report form (SMRF). The report noted that petitioner's husband's unemployment compensation had ended, but no mention was made of him returning to work. Effective June 1, 2012, the household began to receive \$952 per month FS, the maximum for a household of six based upon zero income. FS stayed at that level for the next six months.

3. A state wage match found by the agency showed that petitioner's husband had actually earned substantial income during the six months in question. When actual income was budgeted, household FS would have been reduced.
4. By a notice dated November 21, 2013, the agency informed petitioner that the household was overpaid \$5,884 in FS from June 1 through December 31, 2012, claim no. [REDACTED].

DISCUSSION

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 income and calculations are not disputed. Petitioner testified that she did not understand how to do the on-line SMRF and that she did not intend to leave out her husband's income. She said that she called when she received the notice telling her that the FS would be so high but was told that she could use the FS as they already had been issued. There is no record of the call in the agency's case comments, and thus there is no way to determine what questions were asked in the call, whether the worker understood the question, or even whether the worker took the question to be a specific one about petitioner's case or just a general eligibility question (which might explain the lack of a case comment). That said, even if a call center worker gave incorrect information, the overpayment still must be recovered.

I must affirm the agency action to recover the FS. The definition of an overpayment is the receipt of FS that the household was not supposed to receive, regardless of error. In this case the FS were too high because petitioner erred in filling out the on-line SMRF. It clearly was not intentional, but the overpayment still must be recovered.

CONCLUSIONS OF LAW

Petitioner's household was overpaid FS because earned income was not reported on a SMRF.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 Madison,
Wisconsin, this 11th day of March, 2014

\sBrian C. Schneider
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 11, 2014.

Forest County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability