



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155342

PRELIMINARY RECITALS

Pursuant to a petition filed February 06, 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 March 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in determining a total FS overissuance in the amount of \$2,660 in claim numbers [REDACTED] and [REDACTED].

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: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was a recipient of FoodShare (FS) for a two-person household.
3. Petitioner's income fluctuated from month to month and petitioner got periodic bonuses from her employer.

4. Petitioner was sent a notice on April 2, 2012 that indicated that she would be receiving FS, but that she was required to report any month when her “total monthly income (before taxes) goes over \$1,594.”
5. During all the months pertinent here, the agency had budgeted a monthly earned income for petitioner of \$1,387.14.
6. Petitioner’s income exceeded \$1,594 in March, April, May, June, July, August, and September 2012.
7. Petitioner was sent a notice on October 18, 2012 that indicated that she would be receiving FS, but that she was required to report any month when her “total monthly income (before taxes) goes over \$1,640.”
8. Petitioner’s income went over that amount in November and December 2012, as well as in January, March, April, June, July, August, and September 2013.
9. On December 27, 2013, the agency issued a Notification of FS Overissuance for the period from 4/1/12 to 8/31/12 in the amount of \$543.
10. On December 27, 2013, the agency issued another Notification of FS Overissuance for the period from 10/17/12 to 9/30/13 in the amount of \$2,117.
11. Petitioner filed a request for hearing.

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.

An FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook, App. 6.1.1.2. 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 agency alleges that this overpayment results Petitioner’s failure to report income exceeding 130% federal poverty level (FPL). Specifically, the agency alleges the petitioner did not report an increase in income. The agency argues that had this increase been reported, the subsequent FS allotments received would have been lower as reflected on the FS Overpayment Worksheets submitted as part of exhibit #1.

For a household of two, as this was, petitioner was required to inform the agency if her income went above \$1,594. The agency was not certain as to whether the agency made the error here, or whether petitioner misreported. But, it really does not matter. The only question is whether petitioner received more in FS benefits than she would have received if the agency had budgeted the correct income. Clearly, for at least some of these months, the petitioner should have reported that her income was as high as \$2,443 as it was in August 2012. Petitioner applied for FS in March of 2012 and her income in that month was \$2,797. She was required to report that significant income. In fact, she would not have been eligible for FS anymore if she had until she could have verified a lesser income in subsequent months.

At hearing, petitioner appeared shocked that she would have an obligation to report increases in income such as bonuses “so, based upon that, I am supposed to call you guys every three months when we get a bonus of however much it is...?” Petitioner also argued that did not believe the overpayment is correct because she has a lot of expenses and still did not have enough money to live comfortably. Petitioner did

not dispute the income numbers attributed to her by the Department. Based on my review of the record including employer records and the Work Number database records, the income numbers appear reliable and authentic. It is clear from this record that petitioner’s monthly income regularly was over the reportable amount in many of the overpayment months.

CONCLUSIONS OF LAW

The Department did not err in its determination of the two claims of overpayment

THEREFORE, it is ORDERED

That this appeal 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 3rd day of April, 2014

\sJohn P. Tedesco
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 3, 2014.

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