



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155530

PRELIMINARY RECITALS

Pursuant to a petition filed February 12, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on March 12, 2014, by telephone.

The issue for determination is whether petitioner was overpaid FS due to unreported income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Adekunle Fajembola
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner applied for FS on July 19, 2012 as a one-person household. She reported that she had worked at [REDACTED] [REDACTED] [REDACTED] until June 29, 2012, and that at present her only income was \$738 Supplemental Security Income (SSI).
3. On August 3, 2012, the agency informed petitioner that she would be receiving \$83 FS for July and the maximum \$200 per month thereafter.

4. The \$200 per month continued until June, 2013. In May, 2013 petitioner contacted the agency about an FS renewal and her current employment at the [REDACTED] was mentioned. At that point the agency investigated and discovered that petitioner had returned to work at the [REDACTED] in September, 2012, and the income had not been reported or budgeted.
5. The agency obtained petitioner's income record from the [REDACTED] district and found that the employment income would have caused FS to be discontinued effective November 1, 2012 had it been reported. By a notice dated January 22, 2014, the agency informed petitioner that she was overpaid \$1,600 in FS between November 1, 2012 and June 30, 2013 due to unreported income, client error, 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).

Petitioner testified that she told the agency workers that she would be returning to work in September and that she just assumed that they knew. In fact, case comments show exactly that, but case comments also state that she "will notify us in September when she returns to work so [employment income] can be updated." Obviously there was confusion in that petitioner did not understand that she needed to report the return to work, and that is why the overpayment is considered client error rather than fraud. The Milwaukee County agency is huge with thousands of clients, and thus it is the clients' duty to report changes even if they previously told agency workers that changes would be imminent.

I have reviewed that calculations and find that the overpayment was determined correctly.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid FS in 2012 and 2013 because she forgot to report her return to work at a [REDACTED] [REDACTED].

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 17th 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 17, 2014.

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