



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155610

PRELIMINARY RECITALS

Pursuant to a petition filed February 19, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the La Crosse County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on March 12, 2014, by telephone.

The issue for determination is whether the Division of Hearings and Appeals has authority to reduce payments on an overpayment recovery.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tom Miller

La Crosse County Dept. of Human Services
300 N. 4th Street
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County who receives FS.
2. On May 25, 2011, the agency notified petitioner that she was overpaid a total of \$6,830 FS from March 1, 2008 through June 30, 2011 due to unintentional household error. Petitioner did not appeal, and the agency has been recouping the overpayment since that time by reducing petitioner's monthly FS allotments by 10%.

3. Petitioner filed this appeal on February 19, 2014 contesting the overpayment and alternatively requesting lower monthly payments.

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.

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Adm. Code, §HA 3.05(3)(b).

At this point it is too late to contest the overpayment itself. Had petitioner appealed within 90 days of the May 25, 2011 notice, she might have had a reasonable claim that she was not overpaid, but the law does not allow the Division of Hearings and Appeals to return to the merits of the claim at this late date.

7 C.F.R. §273.18(g)(1) provides that the agency shall recover overpaid FS from an ongoing case by reducing the current allotment by \$10 or by 10%, whichever is greater. See also FS Handbook, App. 7.3.2.6. Thus the agency is required to use the 10% of current FS as the recovery amount.

CONCLUSIONS OF LAW

1. Petitioner's appeal of an FS overpayment was untimely.
2. The Division of Hearings and Appeals does not have authority to reduce the monthly repayment from 10% of the current FS allotment.

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.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability