



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/156373

PRELIMINARY RECITALS

Pursuant to a petition filed March 26, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on April 23, 2014, at La Crosse, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare.

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: Bob Uebele

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County, and the sole person in her FoodShare assistance group.

2. Following receipt and processing of petitioner's April, 2013, Six Month Report form, the respondent determined that petitioner had household income of \$1,059.00 (Soc. Sec. \$944.00 + Hanover \$107.00+ Gund Luth \$8.00).
3. On or about March 3, 2014, the respondent discovered agency error in calculating income based on net, as opposed to gross, income.
4. The petitioner received \$655.00 more in FoodShare than she was entitled to between April 4, 2013 and September 30, 2013, because the agency did not correctly calculate petitioner's gross income when determining her benefits.

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, § 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 county agency contends that the petitioner received \$655.00 more in FoodShare than she was entitled to between April 4, 2013 and September 30, 2013, because the agency used petitioner's net income as opposed to her gross income. The petitioner does not challenge the agency's calculations but contends that she cannot afford to repay the overpayment, nor was it her fault. Nevertheless, because FoodShare regulations, unlike medical assistance regulations, require the agency to recover all overpayments regardless of who is at fault, I must uphold the overpayment finding.

I have no equitable powers that would allow me to consider the fairness of the situation and must apply the law as it is written. Therefore, I must find that the county agency correctly seeks to recover those benefits.

CONCLUSIONS OF LAW

The petitioner must repay an overpayment of FoodShare that occurred between April 4, 2013 and September 30, 2013, even if the agency's error caused the overpayment.

THEREFORE, it is

ORDERED

The petitioner's 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 27th day of May, 2014.

\sPeter McCombs
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 May 27, 2014.

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