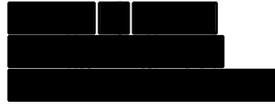




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/157999

PRELIMINARY RECITALS

Pursuant to a petition filed May 27, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by Brown County Human Service to recover FoodShare benefits (FS), a hearing was held on July 9, 2014, by telephone.

The issue for determination is whether the county correctly determined an FS overpayment.

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: Diane Van Asten
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Brown County.
2. Petitioner received FS for his family during the period April 1, 2008 through February 28, 2013. During that period petitioner received \$500 monthly from his father to help with family expenses, but petitioner did not report the monthly gifts to the FS agency.
3. By a series of notices dated April 4, 2014, the county informed petitioner that he was overpaid a total of \$8,062 in FS during the period because he failed to report income, claim nos. [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]. The

claims were determined by calculation the FS that would have been issued had the income been reported and comparing that amount to the FS actually issued.

### 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).

An FS recipient must report the receipt of all income. Monetary gifts over \$30 are considered “unearned income” for FS purposes, particularly when they are received regularly. 7 C.F.R. §273.9(b)(2)(v) and (c)(2); FS Handbook, App. 4.3.4.2, no. 20.

Petitioner acknowledges that he received the regular \$500 payments. He did not report them because he mistakenly thought that they were not counted for FS purposes, and the county acknowledges that petitioner simply erred in not reporting the payments by calling the claims “client error” rather than fraud.

Petitioner appealed hoping to have the amount reduced due to the family’s financial circumstances. I have reviewed the rules and can find no authority for the Division of Hearings and Appeals to do so. The only jurisdiction this office has is to determine whether the household was overpaid and the amount of the overpayment; there is no discretion to look beyond those issues to determine whether a household is capable of repaying the overpaid amount. The Public Assistance Collection Unit does have authority to write off claims, but the authority is strictly limited as found in the FS Handbook, App. 7.3.2.7; in particular a number of years have to pass without successful collection using all possible means of collection.

### CONCLUSIONS OF LAW

1. The county correctly determined an FS overpayment issued to petitioner’s household.
2. The Division of Hearings and Appeals does not have authority to reduce the claim based upon the household’s financial circumstances.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 14th day of July, 2014

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\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 July 14, 2014.

Brown County Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability