



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158004

PRELIMINARY RECITALS

Pursuant to a petition filed May 31, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regards to the overpayment of FoodShare benefits (FS), a hearing was held on June 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department, by its agents, correctly determined that the petitioner was overpaid \$2,529 in FS in February, 2013 – January, 2014; and \$540 in February – April, 2014, due to underreported bonus related income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. She was receiving FS in the periods of February, 2013 – January, 2014, and February – April, 2014, as the casehead of a four person household composed of her and three minor children.
2. On February 26, 2013, the petitioner filed an online ACCESS application for FS re-certification. In the application, the petitioner reported that she was working at [redacted] [redacted], was paid bi-

- weekly, and was working 32.5 hours per week at \$14.78 per hour. See, Exhibit #2, attached ACCESS application dated February 26, 2013. This wage level results in gross earned income of \$2,065.51 per month under prospective budgeting and the 2.15 bi-weekly pay multiplier. She indicated that she had been in this job since April 29, 2010, and changes to this job would happen February 1, 2013. The standard ACCESS application, like the one filed on February 26, 2013, informed her that if her gross income exceeded \$2,498 in a month, she had until the 10<sup>th</sup> day of the following month to report that change.
3. On September 25, 2013, the petitioner filed an online ACCESS application for FS re-certification. In the application, the petitioner reported that she was working at [REDACTED] [REDACTED], was paid bi-weekly, and was working 32.5 hours per week at \$15.29 per hour. See, Exhibit #2, attached ACCESS application dated September 25, 2013. This wage level results in gross earned income of \$2,136.78 per month under prospective budgeting and the 2.15 bi-weekly pay multiplier. She indicated that she had been in this job since April 29, 2010, and changes to this job would happen September 1, 2013. The ACCESS application of September 25, 2013, specifically informed her that if her gross income exceeded \$2,498 in a month, she had until the 10<sup>th</sup> day of the following month to report that change.
  4. On October 1, 2013, the petitioner's online ACCESS application was processed by the agency. A SWICA earned income cross match was performed on October 14, 2013, and the agency discovered that the petitioner's gross earned income exceeded \$2,498 in 5 of the 7 months immediately prior, and that the petitioner had never reported these increases as they occurred at any time prior to that date. The case was referred to the fraud unit at that time. See, Exhibit #2, attached Case Comments for October 14, 2013.
  5. On March 3, 2014, the petitioner again filed an online ACCESS application for FS re-certification. In the application, the petitioner reported that she was working at [REDACTED] [REDACTED], was paid bi-weekly \$15.30 per hour. She did not state the number of hours per bi-weekly period, nor that any changes were expected to happen. She also indicated for the first time that she receives a bonus of commission of \$54.69, but this note did not state how often or if one time only. See, Exhibit #2, attached ACCESS application dated March 3, 2014. She again indicated that she had been in this job since April 29, 2010. The ACCESS application of March 3, 2013, also informed her that if her gross income exceeded \$2,498 in a month, she had until the 10<sup>th</sup> day of the following month to report that change.
  6. On April 1, 2014, the Department issued two sets of Notification of FS Overissuance to the petitioner, with related worksheets demonstrating the computations, informing her that the agency had determined that she was overpaid \$2,529 of FS in the period of February, 2013 through January, 2014; and \$540 of FS in the period of February – April, 2014; both due to client errors in failing to report earned income.
  7. On May 31, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the correctness of the two overpayments alleged on April 1, 2014, and asserting that she reported the existence of her bonus payments from [REDACTED] [REDACTED] on an ongoing basis and thus had reported her earned income.
  8. In 12 of the 15 months preceding April 30, 2014, the petitioner had gross earned income in excess of \$2,498 when her bonus payments were included in her gross monthly income. See, Exhibit #2, attached The Work Number report, at pp. 5-6; attached Notifications of Overissuance; and see, Exhibit #2, Case Comments, entry for March 28, 2014.
  9. There is no evidence in the agency records that the petitioner contacted the agency at any time by the 10<sup>th</sup> day of the month after the increases in income in 12 of the 15 months preceding April 30, 2014, to report increased bonus amounts in detail or with verification; or to ever request that her income be averaged based upon past months earnings. See, Exhibits #2 & #3.

## DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b); see also, *FoodShare Wisconsin Handbook*, § 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FS Handbook, § 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. *FoodShare Wisconsin Handbook*, § 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

The “discovery” date is “the date that the agency became aware of the potential that an overissuance may exist.” BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the evidence in the case comments indicates that the agency became aware of a potential overpayment on July 18, 2013.

The agency alleges that this overpayment results from the Petitioner’s failure to accurately report her earned income exceeding 130% federal poverty level (FPL), when it did so. Specifically, the agency alleges the Petitioner did not report her periodic bonuses and therefor her income was not accurately budgeted in determining her eligibility and FS allotments in the two test period. The Petitioner disputes the agency’s contention that she did not report her bonuses, asserting she did so at six month reviews.

The evidence shows that repeatedly at renewal application in 2013 & 2014, the petitioner was informed via the application form as to her responsibility to report by the 10<sup>th</sup> of the month after it happens, any increase in gross monthly income that causes the household’s income to exceed 130% of the Federal Poverty Level for the reported household size. The application also provides a table of this income level for up to a 10 person household size. Petitioner submitted only proof, when submitted at all, of her regular hours of work at reviews, not proof of any bonuses or commissions she actually received in intervening months. And the record makes it clear that she received substantial bonus placing her household over the gross income limit in 4 out of every 5 months in the period from February, 2013 – April, 2014.

In determining the amount of FS to be issued each month, the FS regulations provide that an agency is required to budget all of the recipient’s nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. Generally, the agency should use income from the last 30 days to determine prospective income unless that income does not accurately represent anticipated future income. *FoodShare Wisconsin Handbook*, App. 1.2.4.2.

If income fluctuates, the worker must determine a monthly average using prior months’ income. Specifically, § 1.2.4.2 provides as follows:

You may use income received during the last 30 days as an indicator of the income that is and will be available to the household during the certification period, unless that income does not accurately reflect changes in income that have occurred or are anticipated to occur.

If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. To average widely fluctuating income, use the household’s anticipated income including fluctuations anticipated over the certification period. In any case, make

every attempt to accurately verify prospective income and clearly document the reasoning for the prospective income estimate.

Here, however, the petitioner was not reporting actual income or seeking averaging of actual income over months or a tax year. Rather, each time she completed the renewal application she merely inserted her hourly wage and average hours per week.

Likewise, Case Comments do not reveal any ad hoc or reported increases in the month after such increased occurred. Rather, it is apparent that the petitioner simply ignored the reporting requirement in any non-renewal month. See, Exhibit #2; and see specifically, Exhibit #2, at pp. 7-9.

I conclude that the overpayment in this case is accurate based upon the best evidence available of the petitioner's repeated pattern of failing to report income increases and the best available evidence of her actual income in the two overpayment periods tested. Nor did she ever indicate that she had severely fluctuating monthly income in any given month in either test period in any detail or request alternative budgeting on an average basis. Because these overpayments were caused by client error, the agency may recover retroactive to February 1, 2013.

The agency actions for both overpayments are sustained, and the petitioner's appeal is dismissed.

### CONCLUSIONS OF LAW

That the Department correctly determined that the petitioner was overpaid \$2,529 in FS from February, 2013 – January, 2014, in FS Claim No. [REDACTED]; and that she was overpaid \$540 in FS from February – April, 2014, in FS Claim No. [REDACTED].

**THEREFORE, it is**

**ORDERED**

That this petition for review herein be, and the same hereby 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 10th day of July, 2014

---

\s\sKenneth D. Duren, Assistant Administrator  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 10, 2014.

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



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 10, 2014.

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