



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158220

PRELIMINARY RECITALS

Pursuant to a petition filed June 09, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on July 09, 2014, at Janesville, Wisconsin.

The issue for determination is whether the county agency is correctly seeking recovery of a FoodShare (FS) overpayment of \$1,007 to petitioner from the period of October 1, 2013 to December 31, 2013, due to her failure to timely report that she was working during her September 11, 2013 review resulting in reduced household FS benefits during the entire overpayment period.

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: Laura Middleton, ESS
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Rock County.

2. The petitioner received the following FoodShare (FS) benefits for a household of four during the period of October 1, 2013 through December 31, 2013: a) October, 2013 - \$668; b) November, 2013 - \$632; and c) December, 2013 - \$632.
3. During her September 11, 2013, petitioner reported to the county agency that she was unemployed.
4. The county agency discovered on November 19, 2013 that petitioner had unreported wages as a medication technician at the [REDACTED] [REDACTED] [REDACTED] Exhibit 1.
5. If petitioner had timely reported her new employment and income, then that household income would have reduced the petitioner's FS benefits for the entire period of October 1, 2013 through December 31, 2013.
6. Employer verification from [REDACTED] [REDACTED] [REDACTED] confirmed that petitioner had started working at that [REDACTED] [REDACTED] on September 4, 2013 and confirmed her pay rate and hours. Exhibit 3.
7. The county agency sent a May 29, 2014 FoodShare Overpayment Notice to the petitioner stating that petitioner received a \$1,007 overpayment during the period of October 1, 2013 through December 31, 2013, due to failure to timely report that she began new employment on September 4, 2013 and income from that employment. Exhibit 2.
8. The county agency's May 29, 2014 FS overpayment worksheets indicates how the \$1,007 FS overpayment was correctly calculated.

DISCUSSION

All FS applicants and recipients have a duty to accurately and truthfully report income to the county agency. 7 C.F.R. §273.12, "Reporting requirements." Furthermore, a FS recipient has the duty to cooperate in provide accurate and true income information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS eligibility and benefits. 7 C.F.R. §273.2(d), "Household cooperation." As explained in the above Findings of Fact, petitioner failed to accurately and timely report her new employment or income from the [REDACTED] [REDACTED] [REDACTED] to the county agency for the period of October, 2013 through December, 2013.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2)(emphasis added).

During the July 9, 2014 hearing, the county agency representatives, ES Supervisor Mary Donahue and ESS Laura Middleton presented a well-organized case, and established that the petitioner failed to timely report to the county agency her new employment and income during her September 11, 2013 FS renewal or even after that review. As a result, petitioner's employment income was not budgeted as income to the FS household in determining the petitioner's FS household eligibility and benefits during the period of October, 2013 through December, 2013. The county agency established that petitioner's net household income was substantially above the income budgeted by the county (due to petitioner's failure to report employment income) resulting in the reduction in petitioner's accurate FS benefits during the entire FS overpayment period. The petitioner did not contest that she had received FS benefits during the period of October 1, 2013 through December 31, 2013. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's FS overpayment determination of \$1,007.00 for that overpayment period.

During the hearing, petitioner alleged some vague excuses for her failure to report her new employment and income. None of those excuses were convincing and her testimony was generally not credible. The county representative also indicated that petitioner had been not reported her new employment even as of the agency's November 19, 2013 discovery of her employment.

The petitioner generally contended that it was unfair that the county agency was seeking recovery of the overpayment. However, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: "**The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .**" 7 C.F.R. §273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Accordingly, the county agency is correctly seeking recovery of a FoodShare (FS) overpayment of \$1,007 to the petitioner from the period of October 1, 2013 to December 31, 2013, due to failure to timely report that she was working during her September 11, 2013 review or after her review resulting in reduced household FS benefits during the entire overpayment period.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a FoodShare (FS) overpayment of \$1,007 to the petitioner from the period of October 1, 2013 to December 31, 2013, due to failure to timely report that she was working during her September 11, 2013 review or after her review resulting in reduced household FS benefits during the entire overpayment period.

THEREFORE, it is

ORDERED

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 8th day of August, 2014

\sGary M. Wolkstein
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 August 8, 2014.

Rock County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability