



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158473

PRELIMINARY RECITALS

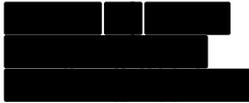
Pursuant to a petition filed June 19, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 18, 2014, at Madison, Wisconsin.

The issue for determination is whether the agency correctly determined liability for FoodShare overissuance of \$1,713.

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: Luisa McKy

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Dane County.
2. Petitioner was a FS recipient from May 2011 to June 2012. During that period, she failed to report income from her self-employment from a jewelry venture she started in May 2011. The

agency had budgeted \$923.32. But, petitioner had \$19,259 in self-employment income in 2011 that she did not report, and \$18,651 in self-employment income in 2012 that she did not report.

3. The agency issued Notice of FS overissuances on 5/19/14 reflecting an overissuance of \$1,017 for the period from May to December 2011; and \$696 for the period from January 2012 to June 2012.
4. Petitioner appealed.

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, Appendix 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 FoodShare Wisconsin Handbook, App. 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.*

As decided in prior cases before the Division of Hearings and Appeals, “discovery” was not the date of referral of a likely overpayment for investigation; discovery is the date when the agency actually determines an overpayment of a fixed amount occurred, and sends a notice to the FS recipient. Overpayments due to client error may be recovered for up to 6 years prior to discovery. However, a recent April 4, 2012 BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012), indicates that the “discovery” date is not the county agency’s FS Overpayment Notice, but instead the “the date that the ESS became **aware** of the potential that an overissuance may exist.” In this case, that date appears to be sometime during May 24, 2012.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

During the hearing, the agency argued that petitioner’s income was over the eligibility limit as of May 2011 when she started a self-employment venture. The agency had budgeted \$923.32 for petitioner based on her application and the [REDACTED] restaurant reported income. But, based on the amended 2011 tax return and the Schedule C, petitioner had \$19,259 in self-employment income that she did not report. The Schedule C for 2012 indicates that petitioner earned \$18,651 in self-employment income. The agency explained that petitioner reported wages from one job at a restaurant, but failed to report any income from her jewelry design and production business. The agency argues that petitioner filed tax return and amended tax returns in 2011 and in 2012. In fact, it appears that three separate returns were filed in 2011 and two were filed in 2012. The agency representative testified that on one occasion, petitioner stated to her that she needed her tax return to reflect a higher income because she wished to include that with a mortgage application to buy a home. The agency provided the various tax returns which reflect wildly different adjusted gross income numbers.

Petitioner did not specifically rebut the assertion that her income exceeded reporting requirements. Petitioner could not adequately explain the reason for the multiple tax returns and denied ever making a statement about needing to show a higher income to get a mortgage. Overall, petitioner was not credible and did not adequately explain such a bizarre chain of events such as is reflected in this record with multiple tax returns. I find it most likely that petitioner failed to report income earned from her business

because she wanted to continue to receive public benefits. Petitioner submitted some invoices from her business reflecting payments as high as \$759 and \$1,315 in June 2012 and \$800 cash in November 2011. How petitioner could not consider this income reportable to the agency remains unexplained. Petitioner statement that it was such a minor venture does not ring true. I find the tax returns reflecting the higher income numbers to be the most credible and reliable evidence of income in this matter.

CONCLUSIONS OF LAW

Petitioner was overpaid FS as reflected in the FS overpayment worksheet in Exhibit #1.

THEREFORE, it is **ORDERED**

That this 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 11th day of September, 2014

\sJohn P. Tedesco
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 September 11, 2014.

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