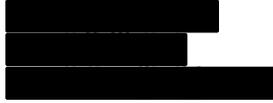




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158484

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 17, 2014, at Milwaukee, Wisconsin. The record was held open 7 days post-hearing to allow the Petitioner to submit rent receipts. On July 21, 2014, the Petitioner submitted the rent receipts and the record was closed.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$3060 from the Petitioner for the period of May 1, 2013 – February 28, 2014.

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: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.

2. In September, 2012, the Petitioner completed a FS renewal. On September 19, 2012, the agency issued a Notice of Decision to the Petitioner informing her that she would continue to get \$367/month in FS benefits. This was based on a household size of two, income of \$0, rent of \$50/month. The notice informed the Petitioner that if her gross monthly household income exceeds \$1,260.83, she must report to the agency by the 10th day of the next month.
3. In February, 2013, the Petitioner completed a FS renewal. No changes were reported by the Petitioner. On February 11, 2013, the agency issued a Notice of Decision to the Petitioner informing her that she would continue to get \$367/month in FS benefits. The notice informed the Petitioner that if her gross monthly household income exceeds \$1,640, she must report to the agency by the 10th day of the next month.
4. In February, 2013, the Petitioner reported to the agency that she obtained employment with [REDACTED]
5. On March 14, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease effective April 1, 2013 to \$312/month. This was based on a household size of two, earned income of \$772.95/month and rent of \$80/month. The notice informed the Petitioner that if her gross monthly household income exceeds \$1,640, she must report to the agency by the 10th day of the next month.
6. In January, 2014, the agency received an alert of a wage discrepancy between the Petitioner's state wage record and the Petitioner's wages as reported to the agency. In reviewing the alert, the agency determined it had incorrectly failed to count the child support income the Petitioner received from October, 2012 – February, 2014.

7. The Petitioner received the following monthly child support:

February, 2013	\$ 433.90	August, 2013	\$ 513.00
March, 2013	\$ 513.00	September, 2013	\$ 513.00
April, 2013	\$ 501.38	October, 2013	\$ 500.00
May, 2013	\$ 524.62	November, 2013	\$ 501.00
June, 2013	\$ 513.00	December, 2013	\$ 513.00
July, 2013	\$ 513.00	January, 2014	\$ 513.00
		February, 2014	\$ 513.00

8. On May 1, 2014, the agency received verification of Petitioner's actual wages from [REDACTED]. Petitioner's gross monthly wages from [REDACTED] are as follows:

February, 2013	\$ 724.94	August, 2013	\$1,426.72
March, 2013	\$1,176.95	September, 2013	\$1,271.81
April, 2013	\$ 753.41	October, 2013	\$1,130.88
May, 2013	\$1,428.12	November, 2013	\$1,199.28
June, 2013	\$1,165.04	December, 2013	\$1,512.69
July, 2013	\$1,229.60	January, 2014	\$1,278.16
		February, 2014	\$ 988.56

8. Petitioner's rent expense was \$50/month for January and February, 2013, \$80/month for March – May, 2013 and \$300/month for June, 2013 – February, 2014.

9. On May 2, 2014, the agency issued a Notification of FS Overissuance to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$3060 for the period of May 1, 2013 – February 28, 2014 due to the Petitioner’s failure to report income over the reporting requirement.
10. On June 19, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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.*

"Discovery" is “the date that the ESS [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 agency became aware of a potential for an overissuance in January, 2014. The agency alleges client error in failing to report when her household income exceeded the reporting requirement, resulting in the overissuance.

The Petitioner did not dispute that she did not report her increased income to the agency. She took issue with the length of time that it took the agency to inform her of the overissuance. She also asked about the methods regarding repayment. Further, it was noted that her rent expense increased in June, 2013.

Based on the evidence, I conclude that the Petitioner’s gross monthly household income exceeded the reporting requirement of \$1,640 in March, 2013. The Petitioner was required to report the increased income to the agency by April 10, 2013, which would have impacted her FS benefits beginning May 1, 2013. The agency correctly established the overpayment period as beginning May 1, 2013. Her income continued to exceed the gross income limit through the overpayment period with the exception of October, 2013 and February, 2014. In October, 2013 and February, 2014, the Petitioner’s income did not exceed the gross income limit but did exceed the net income limit. Therefore, for the period of May 1, 2013 – February 28, 2014, the agency correctly seeks a total recovery of all FS benefits issued to the Petitioner.

Based on the evidence presented, the agency correctly seeks to recover an overissuance of FS benefits in the amount of \$3,060 from the Petitioner for the period of May 1, 2013 – February 28, 2014.

CONCLUSIONS OF LAW

The agency correctly seeks to recover an overissuance of FS benefits in the amount of \$3,060 from the Petitioner for the period of May 1, 2013 – February 28, 2014.

THEREFORE, it is

ORDERED

That the Petitioner’s appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of August, 2014

\sDebra Bursinger
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 13, 2014.

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