



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158639

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 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 29, 2014, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner was overissued FoodShare benefits and, if so, whether the overissuance was correctly calculated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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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:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated June 18, 2014. It informed Petitioner that she had been overissued FoodShare benefits for the period from November 1, 2013 through February 28, 2014 in the amount of \$1380.00. This is claim number [redacted].
3. The basis for this FoodShare overissuance claim was agency error. Petitioner reported income that the agency did not budget.

4. Petitioner was employed with two jobs during that time period relevant. Both paid Petitioner biweekly with her total gross monthly income being \$2838.00. The agency mistakenly recorded her hours of employment as being biweekly instead of weekly resulting in budgeting only half of Petitioner's gross monthly income, i.e. \$1419.00.
5. Petitioner's FoodShare household size is 3. She was given credit for the standard deduction of \$152.00, a utility allowance of \$450.00 and rent expense of \$695.00.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare 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 *Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

Here there is no issue as to the amount of income or the reporting of the income. Petitioner had two jobs and reported as required but, as noted in the findings, only half of Petitioner's hours and wages were counted in determining her FoodShare eligibility. Again, regardless of error an overpayment is to be recovered.

Petitioner asks that the amount of the overpayment be reduced because it occurred through no fault of her own. There is, however, nothing in the federal law governing the FoodShare program or in the state and policy implementing it that permits such a reduction.

Finally I noted a number of errors on the overpayment work sheets so have reviewed the final calculation. The errors included the gross income limit (per FSH, §§4.2 and 8.1.1 and Exhibit # 5 at page 2 it should be \$3256.00) and the rows on the worksheet where deductions for earned income and the standard deduction were placed. Nonetheless, the final result does not change.

For Petitioner's review the calculation of eligibility and allotment levels is as follows. Once a household passes the gross income test the following deductions are applied (*FSH*, at § 4.6):

- (1) a standard deduction - which currently is \$152 per month for a household of 1-3 persons, 7 *CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 *CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 *CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, 7 *CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction – the utility allowance is a standard and is \$450.00 per month and the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 *CFR § 273.9(d)(5)*. There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH*, §§ 4.6.7.1 and 8.1.3.

Finally, Petitioner should note that changes reported in one month are effective in the next. *FSH*, §6.1.3.3. If she has any changes in income or the allowable expenses detailed above she should report these as soon as possible.

CONCLUSIONS OF LAW

That the evidence does demonstrate that Petitioner was overissued FoodShare benefits as alleged by the agency.

THEREFORE, it is

ORDERED

That this 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 22nd day of August, 2014

\sDavid D. Fleming
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 22, 2014.

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