



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158812

PRELIMINARY RECITALS

Pursuant to a petition filed July 05, 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 September 02, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency was correct in its determination of a FoodShare (FS) overpayment in the amount of \$1,398 from 12/1/13 to 5/31/14.

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

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner was a recipient of FS in 2013 and 2014.
3. Petitioner was an employee at [redacted] with varying hours.

4. Petitioner was receiving Social Security payments in the amount of \$745 per month.
5. For the months of December 2013 to May 2014, excluding March, the agency did not budget any earned income for petitioner based on documentation it received stating that petitioner had no set scheduled hours. As for March, the agency did budget limited earned income based on an employer contact that indicated 15 hours of work. During this time, petitioner did earn wages that petitioner did not report. Petitioner received FS based on the budgeted amount which did not include the wages.
6. In May 2014, [REDACTED] [REDACTED] provided the agency with detailed wage records. Given the wages paid and the total income, petitioner would not have received the FS that she received during the overpayment period.
7. Petitioner filed this appeal.

### **DISCUSSION**

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). 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(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

An FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook, App. 8.1.1.1.

In this case, the employer verified paid wages which were never budgeted accurately. In all but one of the overpayment months, no earned income was budgeted at all because none was reported. Petitioner had repeated opportunities to report her actual wages as they usually made her income fall above the reporting limit. The only question here is whether petitioner received more FS than she was entitled to receive given her actual income. There was an overpayment of FS based on this record. The overpayment worksheet accurately reflects the difference in what was disbursed based on the incomplete information compared to what should have been premiums that would have been required if the agency had known of the earned income.

Petitioner did not argue that the determination of the overpayment was an error. She stated that she did not report her excess income only because she did not realize she was not paying attention. Petitioner was most concerned with being found to have committed some wrongdoing. I make no such finding. A determination of an overpayment only is determined by finding that the petitioner paid less of a premium than she should have under the correct budgeting of income. In this case, the overpayment is clear on this record.

### **CONCLUSIONS OF LAW**

The agency correctly determined the overpayment of FS.

**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 29th day of September, 2014

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\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 29, 2014.

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