



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158877

PRELIMINARY RECITALS

Pursuant to a petition filed July 08, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regards to overpayments of FoodShare benefits (FS), a telephone hearing was held on July 29, 2014, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 10 days for the submission of additional evidence.

The issue for determination is whether the Department, by its agents, correctly determined that the petitioner was overpaid \$650 of FS in the period of June – September, 2014, due to client error.

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: Anitra Hickman, Recovery Specialist
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. She was the casehead of a FS group of two in the period of June – September, 2013, consisting of herself and a minor child, [redacted].
2. In early May, 2013, the agency directed Employment Verification Request forms to two of the petitioner's then-recent employers. These forms did not return with wage information.

3. The agency reviewed the State Wage Crossmatch database maintained by the Department of Workforce Development in mid-May, 2013, and concluded that the petitioner had earnings that had not been accurately reported and that affected her FS eligibility.
4. On May 29, 2014, the agency issued a FoodShare Overpayment Notice and Worksheets to the petitioner informing her that the Department had determined that she had been overpaid \$650 of FS from June – September, 2013, due to her failure to report all of her income. In making these overpayment calculations, the agency used averaged monthly gross income derived from quarterly wage reporting in the State Wage Crossmatch database, rather than actual monthly income, because the petitioner’s employers did not provide actual wage data as requested.
5. On July 8, 2014, the petitioner filed an appeal in the instant action contesting the accuracy of the FS overpayment determination of May 29, 2014.
6. At the hearing held on July 29, 2014, the petitioner asserted that her actual earned income was less and distributed less evenly than the quarterly average derived income figures relied upon by the Department in arriving at the conclusion she was overpaid in June – September, 2013. The record was held open for 10 days for the petitioner to provide proof of her actual earned income in this period.
7. The petitioner did so; and I reviewed the gross earned income from her earnings with [REDACTED]. These stubs reveal that she had gross wages in these months of 2013, as follows: \$1,853.60–June; \$1,674.62–July; \$1,819.75–August; and \$2,819.45–September. See, Exhibit #2.
8. Using averaged monthly gross earned income in the overpayment computations, the agency had determined that she had gross wages in these months of 2013, as follows: \$1,832.69–June; and \$1,962.21 in each of the months of July, August & September.

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*, § 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*, § 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.*

The “discovery” date is “the date that the 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 evidence in the case comments indicates that the agency became aware of a potential overpayment on May 28, 2014.

The agency alleges that this overpayment results from the Petitioner’s failure to accurately report her earned income exceeding 130% federal poverty level (FPL), when it did so. Specifically, the agency alleges the Petitioner did not report her correct actual income and therefore her income was not accurately budgeted in determining her eligibility and FS allotments in the test period. The Petitioner asserts that the agency has used too much income in the FS overpayment budgets. Implicitly, she asserts the overpayment is too high as a result.

The agency replies that it made verification requests about her income to her employers, but received nothing prior to the overpayment determination.

The petitioner rebuts this by offering to prove that she made less in some months than budgeted, and more in one month, September, 2013. The record was held open for her actual income.

This additional information was received and is reflected in Finding of Fact #7, above. See, Exhibit #2. It shows that the averages used by the agency were not accurate. There is no proof that the petitioner willfully refused to provide her income originally.

It is clear that she was overpaid FS for part or all of the time period. But it also appears likely that recomputing using actual income will result in a smaller overpayment for these four months. The matter will be remanded to the Department to review and re-determine the overpayment computations using the actual earned income amounts I have found in Finding of Fact #7, above, instead of the averaged earned income amounts the Department used in the original overpayment computations, with notice.

If the petitioner is again aggrieved by the re-determined overpayment amount, she must file a *new* appeal at that time.

CONCLUSIONS OF LAW

That the agency has erred in determining the petitioner's earned income for the months of June – September, 2013, in computing FS overissuance claim No. [REDACTED]; and the matter must be remanded to the agency to review and re-determine the petitioner's eligibility using her actual earned income, in these four months of 2013, of \$1,853.60–June; \$1,674.62–July; \$1,819.75–August; and \$2,819.45–September.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department and its agents, with instructions to: rescind FS overissuance claim No. [REDACTED] as issued on May 29, 2014; review and re-determine FS overissuance claim No. [REDACTED] (June – September, 2013) using the petitioner's gross earned monthly income for the four months of the test period as stated in Finding of Fact #7, above and the Conclusion of Law, above; and issue an Amended Overissuance Notification to the petitioner informing her of the ultimate re-determination. These actions shall be completed within 10 days of the date of this Decision.

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 20th day of August, 2014

\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 20, 2014.

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