



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/159337

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on August 19, 2014, by telephone.

The issue for determination is whether petitioner was overpaid FS after failing to report employment.

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner applied for FS in September, 2013 as a one-person household with no income. She was given the maximum monthly FS allotment.
3. Petitioner began to work for [redacted] in October, 2013, with her first pay checks received in early November. She earned \$2,920 in November, \$2,057 in December, \$2,464 in January, 2014, \$1,056 in February, and \$1,056 in March.

4. The agency discovered the employment in March, 2014. On March 6 it requested verification of income. When nothing was received, the agency averaged quarterly income from the state wage match. By a notice dated March 18, 2014, the agency informed petitioner that FS would close April 1 because she was over income.
5. By a notice dated June 30, 2014, the agency informed petitioner that she was overpaid \$756 FS from December, 2013 through March, 2014, claim no. [REDACTED]. The overpayment was for all FS paid out because petitioner's average monthly income put her over the limit each month.

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).

Petitioner testified that whenever she intended to report the income she lost her job briefly. However, when petitioner was paid almost \$3,000 in November, including over \$1,000 on November 1, she should have reported the income then. The issue is not why petitioner failed to report the income. The issue is whether she would have received less FS had she reported it timely.

It is clear that the overpayment calculations were correct for December and January. Petitioner's income in those months actually was higher than the averaged amounts. In February and March petitioner's actual income was lower than the amount used in the overpayment calculation. Although the income amounts were requested in March, petitioner did not provide them until the hearing. Nevertheless, the FS rules say that an overpayment is the amount that the household should have received. I have calculated the amount that petitioner should have received in those two months based upon her actual income of \$1,056 per month. With petitioner's \$500 rent and responsibility for utilities, her net income would have been \$445. The big difference would be in the shelter deduction where petitioner would receive the maximum amount of \$459 instead of the calculated amount of \$263. A person with \$445 net income is entitled to \$55 FS.

Petitioner's overpayment therefore is \$189 for December, \$189 for January, \$134 for February (\$189 minus the \$55 she would have been eligible for) and \$134 for March, for a total of \$646.

CONCLUSIONS OF LAW

Petitioner was overpaid \$646 in FS from December, 2013 through March, 2014 because she failed to report employment.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to amend the overpayment paid to petitioner in claim no. [REDACTED] from \$756 to \$646 within 10 days of this decision, and to continue recovery of the amended amount. In all other respects the petition for review 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 27th day of August, 2014

\sBrian C. Schneider
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 27, 2014.

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