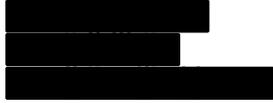




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/159580

PRELIMINARY RECITALS

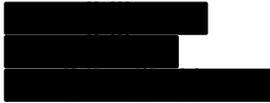
Pursuant to a petition filed August 05, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 24, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the Petitioner was overissued FS benefits, and if so, whether the overissuance was correctly calculated.

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: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
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 FS Overissuance dated July 2, 2014. This notice informed Petitioner that she had been overissued FS as follows:
a. Claim # [redacted] \$1,735.00 05/01/2013 - 03/31/2014

2. The basis for this FS overissuance was client error. Petitioner did not report that she obtained employment and had both earned and unearned income.

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. A FS household that is elderly, blind, or disabled must report any change in income within 10 days of the change. *FSH §6.1.1.1*.

In this case Petitioner is deaf and is an elderly, blind, or disabled household. Therefore, she is subject to the 10 day reporting requirement. Petitioner states that she told the agency about her employment during her renewal, and argues that the overpayment was the agency’s fault because they never implemented that change. Petitioner admits that she did not report her employment within 10 days as required.

The only issue then is whether the agency correctly calculated the overpayment amount. Petitioner reviewed the calculations including the corrected gross income that the agency used to calculate the overpayment amount. Petitioner agreed with those amounts and calculations. The state wage records confirm that the gross income amounts used for the overpayment calculations are correct.

I further note that the agency used the same shelter deduction in calculating the overpayment. As income increases, the shelter deduction tends to decrease because half of the adjusted gross income is used to calculate the shelter deduction. The agency overpayment worker explained that he used the same shelter deduction because he did not believe that Petitioner intentionally underreported her income and this benefited Petitioner. I find that the agency correctly calculated the overpayment in the amount of \$1,735.00.

CONCLUSIONS OF LAW

The agency correctly determined that Petitioner was overissued \$1,735.00 in FS benefits from May 1, 2013 through March 31, 2014.

THEREFORE, it is

ORDERED

That the Petition 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 25th day of September, 2014

\sCorinne Balter
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 25, 2014.

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