



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/159617

PRELIMINARY RECITALS

Pursuant to a petition filed August 06, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on September 04, 2014, at Mauston, Wisconsin. At the request of the parties, the record was held open for two weeks for consecutive closing arguments by the parties to the Division of Hearings and Appeals (DHA). The county representative timely submitted her argument to DHA by September 11, 2014. However, the petitioner failed to submit her responsive closing argument to DHA by September 18, 2014, or even by the date of this decision.

The issue for determination is whether the county agency is correctly seeking recovery of a FoodShare (FS) overpayment in the amount of \$339 to the petitioner during the period of December 1, 2013 to March 31, 2014, due to failure to timely report her new employment and income resulting in net income above the income eligibility limits for a FS household of one.

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: Megan Thurston, ESS
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a disabled resident of Juneau County.
2. On September 27, 2012, petitioner signed her FS application which included her rights and responsibilities.
3. The petitioner receives FoodShare (FS) benefits for a household of one.
4. The county agency sent notices to the petitioner on August 26, 2013, August 27, 2013, September 9, 2013, and December 9, 2013. All of those notices explained to the petitioner her "10 day reporting requirement" requiring her to timely report her changes in her employment and income to the county agency per FS Handbook, 6.1.1.1.
5. Petitioner failed to timely report her new employment at Cleaning Solutions, which began October 27, 2013. The petitioner was required to report that new employment within 10 days (by November 6, 2013) which affected her December, 2013 FS benefits.
6. The petitioner's job at Cleaning Solutions ended during March, 2014.
7. The county agency discovered petitioner's new employment through a SWICA wage match on April 29, 2014 which indicated that petitioner had employment in the third and fourth quarters of 2013, but failed to report that employment or income to the county agency.
8. The county agency issued to petitioner \$189 in FS monthly benefits for the period of December, 2013 through March, 2014.
9. The petitioner received average monthly earned income of \$559.50 from Cleaning Solutions during the FS overpayment period. He also receive the following Social Security Disability Income (SSDI) unearned income: a) December, 2013 - \$972; b) January, 2014 - \$987; c) February, 2014 - \$987; and d) March, 2014 - \$987.
10. If petitioner had timely reported her new employment and income, then her household income would have been above the net FS income eligibility limits (\$958) for the each of the months of December, 2013 through March, 2014.
11. The county agency sent a FoodShare Overpayment Notice to the petitioner stating that she received a \$339 FS overpayment during the period of December, 2013 through March, 2014, due to her failure to timely report that her new employment and income to the county agency.
12. The county agency's FS overpayment budget screens confirm that petitioner's income was above the FS net income eligibility limits for a household of one for the months of December, 2013 through March, 2014, and that the \$339 FS overpayment was correctly calculated.

**DISCUSSION**

All FS applicants and recipients have a duty to accurately and truthfully report income to the county agency. 7 C.F.R. §273.12, "Reporting requirements." Furthermore, a FS recipient has the duty to cooperate in provide accurate and true income information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS eligibility and benefits. 7 C.F.R. §273.2(d), "Household cooperation." As explained in the above Findings of Fact, petitioner failed to timely report her new employment at Cleaning Solutions, which began October 27, 2013. The petitioner was required to report that new employment within 10 days, by November 6, 2013 (which affected her December, 2013 FS benefits).

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2)(emphasis added).

During the September 4, 2014 hearing, the county agency representatives, ESS Meagan Thurston, presented a well-organized case, and established that the petitioner failed to timely report to the county agency her new employment and income to the county agency. The new employment and income was only discovered through a SWICA wage match. As a result, petitioner's employment income was not budgeted as income to the FS household in determining the petitioner's FS household eligibility and benefits for the months of December, 2013 through March, 2014. The county agency established that petitioner's net household income was substantially above the income budgeted by the county (due to petitioner's failure to timely report her new employment income) resulting in income ineligibility during the FS overpayment period. The petitioner did not contest that she had received FS benefits during the December, 2013 through March, 2014 period. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's FS overpayment determination of \$339.00 for that overpayment period.

During the hearing, petitioner explained that she was confused about benefits from the county agency, Social Security (SSDI), DDB, and DVR and their reporting requirements. She alleged that she thought her only reporting requirement was to DDB or Social security. However, as explained by the county agency, petitioner was fully notified of the reporting requirement by receiving five separate notices from the county agency informing her of the 10 day reporting requirement regarding changes in her employment and income. See Findings of Fact #4 and #5 above.

The petitioner generally contended that it was unfair that the county agency was seeking recovery of the overpayment. However, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: **"The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . ."** 7 C.F.R. §273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Accordingly, based upon the above, I must conclude that the county agency is correctly seeking recovery of a FoodShare (FS) overpayment in the amount of \$339 to the petitioner during the period of December 1, 2013 to March 31, 2014, due to her failure to timely report her new employment and income resulting in net income above the income eligibility limits for a FS household of one.

### **CONCLUSIONS OF LAW**

The county agency is correctly seeking recovery of a FoodShare (FS) overpayment in the amount of \$339 to the petitioner during the period of December 1, 2013 to March 31, 2014, due to failure to timely report her new employment and income resulting in net income above the income eligibility limits for a FS household of one.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 13th day of October, 2014

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\sGary M. Wolkstein  
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 October 13, 2014.

Dane County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability