



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/159665

PRELIMINARY RECITALS

Pursuant to a petition filed August 05, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Portage County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on September 04, 2014, at Stevens Point, Wisconsin.

The issue for determination is whether the county agency is correctly seeking a FoodShare (FS) overpayment in the amount of \$20 for the month of July, 2014, due to petitioner's failure to timely report his increased employment and income which resulted in household income above the FS income eligibility limits for the month of July, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Kyle Patterson, ESS
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.
2. The petitioner receives FoodShare (FS) benefits for a household of one.

3. On December 3, 2012, the county agency sent a notice to the petitioner indicating that he was required to report his gross monthly income to the agency by the 10th of the month following that change, when that gross income exceeds \$1,211.
4. During May, 2014, petitioner had gross income of \$1,539.40 that was required to be reported to the county agency by June 10, 2014.
5. Petitioner failed to report the increase in his May, 2014 gross income as a [REDACTED] acreage counter until June 17, 2014.
6. The county agency issued to petitioner's FS benefits for the month of July, 2014 of \$20.
7. If petitioner had timely reported his new employment and income, then his household income would have been above the gross and net FS income eligibility limits (\$1,862 and \$931 respectively) for the month of July, 2014.
8. The county agency sent a July 29, 2014 FoodShare Overpayment Notice to the petitioner stating that petitioner received a \$20 overpayment during the month of July, 2014, due to his failure to timely report that his increased gross income to the county agency by June 10, 2014.
9. The county agency's FS overpayment budget screens confirm that petitioner's income was above the FS gross and net income eligibility limits for a household of one for the month of July, 2014, and that the \$20 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 his increased gross income of \$1,539.40 by June 10, 2014 to the county agency (which affected his July, 2014 FS eligibility and 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 Kyle Patterson, presented a well-organized case, and established that the petitioner failed to timely report to the county agency his increased gross income to the county agency by June 10, 2014. 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 month of July, 2014. The county agency established that petitioner's gross and net household income were substantially above the income budgeted by the county (due to petitioner's failure to timely report his increased employment income) resulting in income ineligibility during the July, 2014 FS overpayment period. The petitioner did not contest that he had received FS benefits during July, 2014. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's FS overpayment determination of \$20.00 for that overpayment period.

During the hearing, petitioner explained that he did not recall that he was required to report his gross monthly income to the agency by the 10th of the month following that change, when that gross income exceeds \$1,211. As a result, 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 conclude that the county agency is correctly seeking a FoodShare (FS) overpayment in the amount of \$20 for the month of July, 2014, due to petitioner's failure to timely report his increased employment and income which resulted in household income above the FS income eligibility limits for a household of one for the month of July, 2014.

CONCLUSIONS OF LAW

The county agency is correctly seeking a FoodShare (FS) overpayment in the amount of \$20 for the month of July, 2014, due to petitioner's failure to timely report his increased employment and income which resulted in household income above the FS income eligibility limits for a household of one for the month of July, 2014.

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 29th day of September, 2014

\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 September 29, 2014.

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