



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/159722

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Eau Claire County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 16, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of FoodShare.

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: Aaron Borreson

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.
2. The county agency seeks to recover \$1,685 in FoodShare provided to the petitioner's household from November 1, 2012, through March 31, 2013. This is the entire amount of FoodShare her household received during that period.

3. There are three person in the petitioner's household.
4. The petitioner's husband pays \$445 per month in child support.
5. During the period in question, the petitioner paid \$620 per month in rent.
6. The FoodShare agency sent the petitioner notices on September 7, 2012, October 2, 2012, and January 10, 2013, that she must report to the county agency if her household's income exceeded \$2,115.80. *Exhibits 1-3*. Her household income exceeded these amounts in each of those months.
7. The petitioner's gross household income was \$3,846.71 in November 2012, \$3,260.45 in December 2012, \$5,689.74 in January 2013, \$3,224.02 in February 2013, and \$4,119.08 in March 2013.
8. The petitioner's household paid \$620 in rent and \$450 in child support each month relevant to this decision.
9. The petitioner's household received \$337 in FoodShare each month from November 2012 through March 2013.
10. One hundred percent of the federal poverty level for a three-person household was \$1,591 from November 2012 through March 2013.

DISCUSSION

Federal regulations require state agencies to “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. Recipients must report a change of circumstances within 10 days. 7 CFR § 273.12(a)2. Generally, changes in income must be reported if the income increases to at least 130% of the federal poverty level. Agencies must act on those changes the month after the reported change is due. 7 CFR § 273.12(c)(2). When calculating an overpayment, agencies are instructed to

consider the FS group's reporting requirements. Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported...The overissuance period begins with the first month had the change been reported timely, and would have been effective up to the month prior to when the case was corrected.

FoodShare Wisconsin Handbook, § 7.3.2.1.

The petitioner was notified on September 7, 2012, October 2, 2012, and January 10, 2013, that she must report to the county agency if her household's income exceeded \$2,115.80. *Exhibits 1-3*. Her household income exceeded these amounts in each those months. She contends that a worker told her not to worry about reporting her changes. Even if this is true, because the Department must recover all FoodShare overpayments, it would not matter.

The agency determined that the any overpayment would begin in November 2012 because that was the first month after the petitioner was required to report an increase in income. The net income limit for FoodShare is 100% of the federal poverty level. *FoodShare Wisconsin Handbook*, 8.1.1.1. The petitioner lives with her husband and a child. One hundred percent of the federal poverty level for a three-person household from November 2012 through March 2013 was \$1,591. *Id.*

Net income is determined after subtracting from gross income those deductions—and only those deductions—found in 7 CFR § 273.9(d). The county agency allowed the petitioner the earned income deduction, the standard deduction, and the excess shelter deduction. The earned income deduction equals 20% of a recipient's earned income. 7 CFR § 273.9(d)(2). The petitioner does not challenge the agency's

income figures or calculations. The standard deduction allowed for households with up to three members is \$149. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). And it allowed a shelter deduction for December 2012 and February 2013. Determining the shelter deduction is less straightforward than determining the other deductions. It equals the amount that housing costs, including a standard utility allowance, exceed 50% of the net income remaining after all other deductions are subtracted from gross income. *FoodShare Wisconsin Handbook*, § 4.6.7; 7 C.F.R. § 273.9(d)(6)(ii); *FoodShare Wisconsin Handbook*, § 8.1.3. Because there is a standard utility allowance, actual utility costs are not considered. The FoodShare program allows an excess medical expense deduction for unreimbursed monthly medical expenses that exceed \$35, but only to those who are at least 60 or have been found disabled under certain state or federal programs. 7 CFR § 273.9(d)(3) referring to 7 CFR § 271.2; *FoodShare Wisconsin Handbook*, § 4.6.4.1. No one in the petitioner's household meets either of these criteria. I have reviewed the agency's overpayment worksheet, and it correctly allowed and determined the deductions the petitioner was entitled to.

The petitioner's net household income exceeded 100% of the federal poverty level from November 2012 through March 2013. This means that her household was ineligible for benefits during this entire period. She received \$337 a month, or a total of \$1,685, in benefits during this period. The county agency correctly determined that she must repay this amount.

CONCLUSIONS OF LAW

The petitioner must repay all of the FoodShare benefits her household received from November 2012 through March 2013 because her household's net income exceeded 100% of the federal poverty level during this period.

THEREFORE, it is

ORDERED

The petitioner's appeal 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 23rd day of September, 2014

\sMichael D. O'Brien
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 23, 2014.

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