



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/159913

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 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 September 16, 2014, by telephone.

The issue for determination is whether petitioner's household was overpaid FS after failing to report an increase in income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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 resides with E.B. and their daughter, and they receive FS for a three-person household. In March, 2013, petitioner completed a review. She reported that E.B. was employed by [REDACTED] but was laid off and received unemployment compensation (UC). By a notice dated March 12, 2013, the agency informed petitioner that she would receive \$457 per month FS based

upon \$196.50 weekly UC as the only household income. The amount was increased to the maximum \$526 per month on July 1, 2013, when the system detected that UC ended.

3. E.B. went to work at [REDACTED] in May, 2013. Petitioner reported the employment at her six-month review in September, 2013, and the income was verified.
4. After obtaining income information from [REDACTED], the agency determined that the household was overpaid \$1,374 in FS from July 1 through October 31, 2013, claim no. [REDACTED]. The overpayment was determined by taking petitioner's actual household income, calculating the FS that would have been issued, and comparing that amount to the FS that actually were issued. It was determined that the household was overpaid a total of \$1,578 from July through September, and was underpaid \$204 in October, for a net overpayment of \$1,374. The notice of the overpayment was dated July 25, 2014.
5. E.B. was laid off again in October, reducing the household income. FS were calculated correctly after that date.

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 and E.B. appeared at the hearing. Their sole response to the agency's claim is that they reported the employment at [REDACTED] timely. There simply is no evidence to support the testimony. There are no income verification documents in the record prior to September, 2013, and there is no mention of a report in the agency's case note record. Petitioner was unable to provide a copy of a verification form dated prior to September, 2013. Furthermore, even if the job was reported prior to September, the overpayment nevertheless occurred because the household received FS based upon zero income when in fact there was substantial income during those months, and an FS overpayment must be collected regardless of error.

I conclude, therefore, that the agency correctly determined an FS overpayment.

CONCLUSIONS OF LAW

Petitioner was overpaid \$1,374 in FS during the months of July through October, 2013 because a new job was not reported timely.

THEREFORE, it is

ORDERED

That 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 22nd day of September, 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 September 22, 2014.

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