FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/160606

PRELIMINARY RECITALS

Pursuant to a petition filed September 16, 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 October 09, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of $5,985 from the Petitioner for the period of April 1, 2012 – March 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted] 53224

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:
Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On March 19, 2012, the Petitioner completed her FS renewal. She reported employment at [redacted]. She reported child support income which the agency disregarded due to the

income starting in February, 2012. She reported shelter expense of $850/month. The case was pended for employment and income verification.

3. On March 23, 2012, the agency received an employer verification reporting the Petitioner works 20 hours/week at $11.60/hour.

4. On March 26, 2012 the agency issued a Notice of Decision to the Petitioner informing her she was approved for FS benefits effective April 1, 2012. It budgeted monthly income of $1,779.38 including $997.60/month in earned income and $781.78/month for Petitioner's son's unearned income. It also informed her that if her total gross monthly income exceeds $2,422, she must report it to the agency by the 10th day of the next month.

5. On September 10, 2012, the agency received and processed the Petitioner's Six Month Report Form (SMRF). The Petitioner reported employment at [redacted], 20 hours/week at $11.60/hour. The Petitioner reported $910/month in shelter expense. The Petitioner reported unearned income for her son of $781.78/month. The Petitioner reported she had not received child support for her daughter. The case was pended for employment and income verification.

6. On September 10, 2012, the agency issued a Notice of Decision to the Petitioner informing her that she would continue to receive FS benefits. The agency budgeted gross monthly income of $1,779.38. It further informed her that if her total gross monthly income exceeded $2,498, she must report it to the agency by the 10th day of the next month.

7. On September 21, 2013, the agency received an employer verification reporting Petitioner works 20 hours/week at $12.60/hour (effective June 29, 2012).

8. On March 8, 2013, the agency contacted the Petitioner who reported she is still employed with [redacted]. She reported unearned income for children remained the same. She reported $925/month in shelter expense. The case was pended for employment and income verification.

9. On March 27, 2013, employment verification was received reporting Petitioner works 20 hours/week at $12.98/hour. On March 28, 2013, the agency issued a Notice of Decision informing her that she would continue to receive benefits. The agency budgeted gross monthly income of $2,363.12 including Petitioner's earned income of $1,116.28, Petitioner's son's unearned income of $793.78 and child support of $453.06/month. It further informed her that if her total gross monthly income exceeded $1,962.50, she must report it to the agency by the 10th day of the next month.

10. On September 9, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would increase effective October 1, 2013. The agency budgeted gross monthly income of $1,992.62 including Petitioner's earned income of $1,116.28, Petitioner's son's unearned income of $423.28/month and child support of $453.06. It also informed her that if her total gross monthly income exceeded $2,552, she must report it to the agency by the 10th day of the next month.

11. On September 23, 2013, Petitioner contacted the agency about her six month review. A SWICA discrepancy was noted, pending earned income verification. A referral was made. On September 24, 2013, the Petitioner's SMRF was processed pending employment and income verification. She reported employment at [redacted] of 40 hours/week at $12.98/hour. She reported shelter expense of $950/month. She reported unearned income for her son and child support for her daughter.

12. On March 24, 2014, the Petitioner completed her six month review. On April 3, 2014, the agency received employment and income verification reporting Petitioner works 20 hours/week at $13.24/hour. It also reported Petitioner works 8 hours/weekend with a shift differential of $.50/hour. On April 4, 2014, the agency received a letter from the Petitioner's employer reporting that Petitioner is guaranteed 20 hours/week and that she picks up extra hours as needed.

The verification reported Petitioner works 20 hours/week at $13.24/hour and 8 hours with a shift differential of $.50. A SWICA discrepancy was noted. A request for actual income was made.

13. On April 10, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her benefits would be discontinued effective April 1, 2014 due to income over the program limit. It budgeted gross monthly income of $3,626.72 including Petitioner's earned income of $2,637.36, $446.68/month for Petitioner's son's unearned income and child support of $542.68/month.

14. On July 30, 2014, the Petitioner's employer submitted an employment verification reporting Petitioner has hours that vary but that she is expected to work "at least 40 hours every two weeks." Her current rate of pay is $13.24/hour, overtime pay is $19.86/hour and shift differential pay is $13.74/hour.

15. On August 4, 2014, the Petitioner's employer submitted actual wage information.

16. On August 27, 2014, the agency issued FS Overpayment Notices to the Petitioner informing her that the agency intends to recover overpayments of $3,217 for the period of April 1, 2012 – March 31, 2013 (Claim #[redacted]) and $2,768 for the period of April 1, 2013 – March 31, 2014 (Claim #[redacted]).

17. The Petitioner received child support as follows:

April, 2012	$287.96
June, 2012	$271.84
July, 2012 – September, 2012	$543.68/month
October, 2012	$815.52
November, 2012 – March, 2013	$543.68/month
April, 2013	$815.52
May, 2013 – August, 2013	$543.68/month
September, 2013	$815.52
October, 2013	$381.68
November, 2013	$765.24
December, 2013 – February, 2014	$543.68/month
March, 2014	$863.11

18. Petitioner's gross household income including her earned income, her son's unearned income and child support income for April, 2012 was $2,818.23. Her gross household income for May, 2012 was $3,406.58.

19. On September 16, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS 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 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, § 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FS Handbook, § 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to

discovery. FoodShare Wisconsin Handbook, § 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. Id.

The "discovery" date is "the date that the agency became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the evidence in the case comments indicates that the agency became aware of a potential overpayment on April 9, 2013 when it made a referral to the fraud unit.

The agency alleges that this overpayment results from the Petitioner's failure to accurately report her earned income in her application of March, 2012 and failed to report when her income exceeded 130% of the federal poverty level. Specifically, the agency alleges the Petitioner did not submit actual pay statements or report her overtime hours and therefore her income was not accurately budgeted in determining her eligibility and FS allotments. The Petitioner asserts that she provided employment verifications as required.

The evidence shows that at each renewal in 2012, 2013 and 2014, the Petitioner was informed in the Notices of Decision of her responsibility to report by the 10th day of the next month if her income exceeded 130% of the federal poverty level. Petitioner's applications and verifications contained no mention of overtime hours until March, 2014. The notices also made clear that the agency was only budgeting the Petitioner's regular hours and income. Further, the Petitioner did not accurately report child support income. The notices also made clear what was budgeted for child support income. The Petitioner never contacted the agency to correct the information and did not report to the agency when her gross household income exceeded the reporting requirement.

The agency commenced the overpayment period in April, 2012. The evidence does not establish that the Petitioner initially failed to properly report child support income or her earned income in March, 2012. Her earned income fluctuated based on the number of overtime hours that she was able to pick up during a month. However, when her income exceeded 130% of the federal poverty level in April, 2012, she was required to report to the agency by May 10, 2012. The change in her income would have impacted benefits beginning June, 2012. Therefore, I conclude that the first overpayment period in this case should be adjusted to June 1, 2012 – March 31, 2013 and the amount of the overpayment should be $2,461. The second overpayment period and amount is accurate based upon the evidence presented. I note that because these overpayments were caused by client error, the agency's recovery actions are within the six years prior to discovery and benefits may be recovered.

CONCLUSIONS OF LAW

The agency may recover an overissuance of benefits from the Petitioner in the amount of $2,461 for the period of June 1, 2012 – March 31, 2013 and in the amount of $2,768 for the period of April 1, 2013 – March 31, 2014.

THEREFORE, it is **ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to adjust Claim #[redacted] to an overissuance of FS benefits in the amount of $2,461 for the period of June 1, 2012 – March 31, 2013. This action shall be taken within 10 days of the date of this decision.

With regard to Claim #[redacted], the Petitioner's appeal 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 31st day of October, 2014

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\sDebra Bursinger
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 31, 2014.

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