



FH

Redact

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

In the Matter of

Redact

DECISION

FOP/160737

PRELIMINARY RECITALS

Pursuant to a petition filed September 19, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Jefferson County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 03, 2014, at Jefferson, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's liability for a FS overissuance in the amount of \$3,456.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Sandy Torgerson

Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a resident of Jefferson County.

2. Petitioner underwent a FS renewal in November 2013. Petitioner explained that her husband was self-employed and did not have tax return completed. The agency sent a self-employment verification document for petitioner to complete and submit.
3. The self-employment form was received by the agency on 12/23/14. It indicated income for October, November and December 2013 at \$2,400 of gross income. The agency incorrectly interpreted this to mean \$800 for each month.
4. Petitioner's husband's income was intended by petitioner to be reported at \$2,400 for each of those months.
5. Has the amount been budgeted as \$2,400 per month, the monthly FS allotment would have been \$137.
6. On June 4, 2014, petitioner submitted a self-employment form reflecting \$2,400 for the month of March.
7. On June 4, 2014, petitioner submitted a self-employment form reflecting \$2,400 for the month of April.
8. On June 4, 2014, petitioner submitted a self-employment form reflecting \$2,400 for the month of May.
9. Upon receiving the new income verifications, the agency realized that it had budgeted the income incorrectly since the previous renewal.
10. Petitioner received a FS allotment of \$569 from January 2014 through August 2014.
11. The correct amount of the allotment should have been \$137.
12. The agency issued an overpayment notice.
13. Petitioner appealed.

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).

In this case, the agency interpreted the income form to be reflecting a total income for the three months indicated by petitioner on the top of the form. Petitioner intended the form to be reflecting the income for *each* of the three months. It is not relevant whose fault the error was. It was clearly a miscommunication and it is clear that petitioner received more FS than that to which she was entitled until the time that the agency realized the problem. There has been no allegation that petitioner did anything wrong or that this was an intentional act. It appears only to be an innocent mistake. But, an overissuance must be recouped.

Petitioner conceded that she had been overissued the FS. She was adamant that she did nothing intentionally. As I stated, that is not at issue here and I am not finding fault as part of this process.

CONCLUSIONS OF LAW

The agency did not err in determining that there was an overissuance of FS and that it must be recouped.

THEREFORE, it is

ORDERED

That this 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 15th day of December, 2014

\sJohn P. Tedesco
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 December 15, 2014.

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