



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/160792

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Grant County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on November 19, 2014, by telephone. A hearing set for October 22, 2014 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined an FS overpayment based upon unreported income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Jody Jackering
Grant County Dept. of Social Services
P.O. Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Grant County.
2. During the period January, 2011 through July, 2014, petitioner received FS for a four-person household that included E.A., the father of petitioner's younger child. During that period petitioner reported consistently that E.A. had no income.

3. In 2011 FS were based upon \$602 unemployment compensation (UC). Monthly rent was \$610. Beginning January 1, 2012, the FS were based upon petitioner's earned income of \$619.20 and \$222.18 UC. Beginning March 1, 2012, \$184 child support was added to the income, and then April 1, 2012 child support was reduced to \$173.73. Beginning June 1, 2012 petitioner's earned income was increased to \$899.73 and the UC was removed. Beginning July 1 the child support was removed and petitioner's earned income increased to \$991.92 monthly. Beginning October 1, 2012 \$208.55 in UC was added to petitioner's income. At no time did petitioner dispute the income amounts or the rent payment.
4. Beginning January 1, 2013, all income was removed from the case. Then, beginning July 1, 2013, petitioner reported that she no longer was paying rent; the rent expense was removed from the case although the utility standard continued to be included in the calculations. Beginning November 1, 2013 \$82.96 in monthly child support was budgeted. That amount was reduced to \$58.60 as of April 1, 2014, and the child support increased to \$176.44 effective July 1, 2014. Again, petitioner did not dispute the income or the lack of rent expense.
5. While doing a review in June, 2014, petitioner mentioned that E.A. did odd jobs for pay. Eventually the county requested copies of E.A.'s income tax returns for 2011 through 2013. The tax returns showed E.A.'s yearly self-employment incomes to be \$15,990 in 2011, \$14,039 in 2012, and \$15,099 in 2013.
6. The county then recalculated FS by adding in E.A.'s income of \$1,332.50 monthly in 2011, \$1,169.91 monthly in 2012, and \$1,258.21 monthly in 2013 (the monthly amounts were the yearly amounts divided by twelve). By a series of notices dated August 22, 2014, the county informed petitioner and E.A. that they were overpaid \$8,398 in FS from March, 2011 through July, 2014 because they failed to report E.A.'s income.
7. After the notices were sent E.A. contacted the worker. While going through the calculations the worker noted errors in the originals. Specifically, the overpayment calculations failed to carry over petitioner's income from the "actual budget" column to the "corrected budget" column, and also gave 20% earned income deductions for E.A.'s unreported income. The county then recalculated the overpayment by correcting those errors. By a notice dated September 22, 2014, the county informed petitioner and E.A. that the actual overpayment amount was \$16,215 for the months in question.

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.

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which varied between \$153 and \$160 per month from 2011 through 2014. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7.

Treatment of self-employment income is described at 7 C.F.R. §273.11(a). Such income is annualized over a 12-month period, unless the income is intended to meet the household's needs over a shorter period. §273.11(a)(1)(i) and (iii). To determine monthly income, the agency must take yearly income, add back in depreciation, net loss carryovers, and personal expenses, and then divide by twelve. §273.11(a)(2) and (4).

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). However, in determining an overpayment, the agency shall not give the 20% earned income deduction for income that was not reported to the agency. 7 C.F.R. §273.18(c)(1)(ii)(B).

It is undisputed that petitioner failed to report E.A.'s income until June, 2014, when she mentioned that he did odd jobs. Thus the failure to report the income led to an overpayment. As noted in the findings, the original calculations contained two errors. First, in the overpayment calculations petitioner's income was left out. Second, in the overpayment calculation E.A.'s income was given the 20% deduction. Thus the county re-did the calculations. It is true that the worker re-did the calculations because E.A. tipped her off to the errors when he questioned the claim, but she did not recalculate simply because he questioned her. She recalculated because federal rules required her to do so, to make sure that the correct amount was determined.

I have reviewed the recalculated amounts provided in the September 22, 2014 notice. I find no errors. I will deal with petitioner's objections.

First, petitioner sent copies of her child support and UC payments. As noted in the findings, child support changed regularly, so it is clear that the agency was updating child support based upon the fluctuating payments. For UC it is evident that petitioner continued to receive \$140 per week through the end of 2011, and \$140 per week adds up to \$602 per month (weekly income is multiplied by 4.3 to get monthly income because there are slightly more than 4 weeks in a month - see 7 C.F.R. 273.10(c)(2)). After that UC was reduced in the early months of 2012, removed from the budget in the middle of 2012, and then returned in a reduced amount for a brief period in late 2012. Petitioner's records confirm the county's actions during those months.

Second, E.A. complained that they did not get credit for the shelter expense. As noted above, the shelter deduction is not a dollar-for-dollar deduction from income for FS purposes. It is a reflection of the amount of shelter expenses above one-half of net income. The deduction is always going to be smaller as income rises, and thus any shelter deduction received in the original calculations would have been substantially higher than the deduction in the overpayment calculation. E.A. noted, however, that beginning with July, 2013, the household received no shelter deduction. That is because petitioner reported then that they were not paying rent anymore, so the rent expense was removed from the calculation. The removal of the rent can be seen in the notices issued to petitioner at the time.

If petitioner started to pay rent again, she did not report it. Under FS rules, an expense cannot be included in a budget until the month after it is reported. 7 C.F.R. §273.12(c)(1); FS Handbook, App. 6.1.3.3. Because any new rent was not reported during the months between July, 2013 and July, 2014, the county correctly left rent at zero for those months. The utility standard of \$450 per month was below one-half of net income in all of those months, and thus there would be no shelter deduction.

I conclude that the September 22, 2014 recalculations are correct, and that the county correctly determined a \$16,215 FS overpayment during the period March 1, 2011 through July 30, 2014.

CONCLUSIONS OF LAW

The county correctly determined a \$16,215 FS overpayment during the period March 1, 2011 through July 30, 2014 because petitioner failed to report the self-employment income of a household member.

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 25th day of November, 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 November 25, 2014.

Grant County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability