



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/160856

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 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 21, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that the Petitioner was overpaid Foodshare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On June 27, 2013, the Petitioner submitted an on-line ACCESS renewal, indicating that there were three people in the household, herself and two children. In that renewal, the only income Petitioner reported receiving was three types of Supplemental Security Income in the amounts of \$95.00, \$83.78 and \$710.00 per month. She specifically indicated that she was not receiving any child support income. (Exhibit 2, pgs. 37-49)

3. On July 31, 2013, the Petitioner completed an on-line Six Month Report Form for FoodShare benefits. In that form, the Petitioner again reported her supplemental security income, but this time reported receiving child support for one child in the amount of \$357.31 per month. (Exhibit 2, pgs. 50-53)
4. On August 21, 2013, the agency sent the Petitioner a notice indicating that her June 27, 2013 application for FoodShare benefits was denied, because she was receiving more child support benefits and because she had not completed her six-month report form. (Exhibit 2, pgs. 21-25)
5. On September 9, 2014, the Petitioner contacted the agency to ask why her FoodShare benefits were ending; the agency discovered that it had not processed her six month report form so it ran a mock six month report form and opened her case. (Exhibit 2, pg. 15)
6. In April 2014, the agency became aware that the Petitioner might be receiving additional child support payments. (Id.)
7. On September 2, 2014, the agency sent the Petitioner a FoodShare Overpayment Notice, claim number [REDACTED], indicating that she had been overpaid Foodshare benefits in the amount of \$1,907.00 for the period of September 1, 2013 to April 30, 2014. (Exhibit 2, pgs. 28-33)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 26, 2014. (Exhibit 1)
9. Petitioner is and has been a recipient of Social Security Disability Income. She previously received \$710.00 per month, but now receives \$721.00 per month. (Testimony of the Petitioner; Exhibit 2, pg. 7)
10. The Petitioner has been receiving child support payments since July 2013 for two children according to orders from two separate paternity cases, one ending in 4836 and the other ending in 0327. Payments ranged from a total of \$763.44 per month to \$2042.14 per month. (Exhibit 2, pgs. 10-14)
11. The Petitioner had previously received one Kinship Care payment for her grandson, but stopped receiving payments, because she was able to get child support payments for her grandson. (Testimony of Petitioner)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare 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), emphasis added; see also *FoodShare Wisconsin Handbook (FSH)*, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency’s case and establish facts sufficient overcome the county agency’s evidence of correct action.

In the case at hand, Petitioner did not dispute that she received FoodShare benefits in the amounts stated in aforementioned claims, nor does she quarrel with the agency’s calculation of the overpayment.

Looking at the information the Petitioner provided in her July 2013 renewal and six month report forms and comparing it with the KIDS printout, which tracks child support payments, it is clear that the Petitioner underreported the amount of child support she was receiving in the July 2013 renewal and six month report form. There is no indication in the record that the Petitioner contacted the agency to correct this mistake.

Because FoodShare eligibility and allotments are based upon the combined total of all available income, Petitioner’s under-reporting of her child support income caused an overpayment of FoodShare benefits. (See *FoodShare Wisconsin Handbook Chapter 4.3*)

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner was over-issued FoodShare benefits.

THEREFORE, it is

ORDERED

That the petition 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 29th day of October, 2014.

\sMayumi M. Ishii
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 29, 2014.

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