



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/161112

PRELIMINARY RECITALS

Pursuant to a petition filed October 07, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on November 04, 2014, at Janesville, Wisconsin.

The issue for determination is whether the respondent correctly determined that petitioner was overpaid FS benefits between May 1, 2013, and August 31, 2013, in the amount of \$948.00.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Laura Middleton

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. The county agency contends that the petitioner and her husband received an overpayment of \$948.00 in FS benefits between May 1, 2013, and August 31, 2013.

3. The respondent utilized converted income figures when determining the overpayment.
4. The respondent issued notice of the overpayment to the petitioner on August 27, 2014. Petitioner timely appealed the overpayment determination.

DISCUSSION

Federal regulations require state agencies to “establish a claim against any household that has received more food stamp benefits than it is entitled to receive.” 7 CFR § 273.18(a). This means that the agency must recover all overpaid benefits regardless of who is at fault. FoodShare eligibility and the amount of benefits depend upon income and the number of persons in the household. The county agency contends that the petitioner and her family received \$948.00 more in FoodShare benefits than they were entitled to from May 1, 2013, through August 31, 2013 because the petitioner’s household income was not timely reported or fully counted.

The petitioner disputes the agency’s calculations, asserting that her husband’s actual income does not equal the converted income used by the respondent. As noted above, federal law requires that the agency recover an overpayment even if the agency itself caused it. In this matter, the *FoodShare Wisconsin Handbook*, § 7.3.2.1. gives the following instructions when calculating an overpayment:

When calculating the overissuance, consider the FS group’s reporting requirements. Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported.

Use converted income to determine ongoing benefit eligibility for the overissuance calculation. Only use the income and expenses reported or required to be reported for each month of the overissuance period. In claim calculations, disregard income that was not previously reported and was not required to be reported.

(emphasis added). See also, 7 C.F.R. 273.10(c)(2): Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15.

The agency thoroughly documented the petitioner’s reported income and actual income along with the amount of benefits she received and the amount she should have received when determining the overpayment. I have reviewed that documentation and compared it against the proper allotments based on net income and find the calculations accurate. *Id.*, § 8.1.2.

The petitioner has in effect argued that the program standard, i.e., use of converted as opposed to actual income, is unfair and that the administrative law judge should grant her relief from the program overpayment rules. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner’s household received more FoodShare than it was entitled to because its income was greater than the amount used to determine benefits between May and August, 2013.

THEREFORE, it is

ORDERED

That the petitioner's appeal 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 24th day of November, 2014.

\sPeter McCombs
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 24, 2014.

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