FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/161158

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on November 11, 2014, by telephone.

The issue for determination is whether the agency correctly determined an FS overpayment during the period September, 2011 through September, 2013.

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Anitria Hickman, Katherine May
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Milwaukee County.
2. During the entire period of April, 2011 through September, 2013 petitioner received FS as part of a two-person household with her daughter.
3. In May, 2011, petitioner received $250 FS based upon two sources of income – employment from [redacted] in the amount of $1,440 per month, and $35.25 self-employment that was listed as unearned income on her FS budgets. The $35.25 was listed consistently on notices

through July, 2012; it was removed after the agency received petitioner's 2011 income tax forms. See 06/05/2012 case note.

4. In June, 2011, petitioner reported that the [redacted] job ended. Effective July 1, 2011 petitioner received maximum FS of $367 for a two-person household based upon only the $35.25 unearned income.

5. Petitioner did a renewal in December, 2011. She reported a job with [redacted] earning $1,005.75 every other week for a monthly amount of $2,029.43. FS were reduced to $81 effective January 1, 2012.

6. Petitioner had a six-month review in June, 2012. She reported income consistent with the December report. FS for July were issued in the amount $92 based upon monthly income of $2,026.38 and no unearned income because the $35.25 was removed from the budget.

7. Petitioner did a renewal in December, 2012. She reported working at [redacted] 30 hours per week at $15 per hour. Effective January 1, 2013 FS increased to $193 based upon $1,620.56 monthly income.

8. Petitioner filed a six-month report in May, 2013. After some issues with verification her FS were reduced to $52 effective July 1, 2013, based upon $2,209.12 earned income.

9. Petitioner's actual income was much higher than budgeted in many of the months during the period in question. Although she did not report it until December, 2011, she actually started working for [redacted] in May, 2011. The agency discovered the income errors in late 2013; in December, 2013 it obtained copies of petitioner's pay stubs from [redacted] dating back to the start of her employment.

10. In July, 2011, petitioner's actual [redacted] income was $2,190.83. Income stayed over $2,000 per month until December, when petitioner reported the job on her renewal. Petitioner should have reported the income increase in August based upon the reporting threshold communicated to her in the most recent notice. While petitioner's income in some months remained close to the amounts she reported at her December, 2011 renewal, June, 2012 six-month report, and December, 2012 renewal, income rose dramatically from August through November, 2012, and then in March, 2013.

11. Using actual income, the agency determined that petitioner was overpaid $2,541 during the periods of September 1, 2011 through September 30, 2012 and March 1 through September 30, 2013. After petitioner was notified of the overpayment, she appealed, and in decision no. FOP-157779, dated September 12, 2014, ALJ David Fleming remanded the matter back to the agency with instructions to re-do the calculations because the calculations provided by the agency were filled with errors and were confusing and unreliable.

12. The agency re-processed the calculations and issued a notice to petitioner dated September 18, 2014 with the new calculations attached. The original claims were rescinded and the following new claims were imposed for a total overpayment of $2,495: claim nos. [redacted] in the amount of $1,619 for the months of September 2011 through August, 2012, [redacted] in the amount of $92 for September, 2012, and [redacted] in the amount of $784 for the months of March through September, 2013.

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). If the claim is based on the failure to report an increase in earned income, the agency shall not allow the 20% earned income deduction in the overpayment calculation; it is allowed only for earned income that was reported. 7 C.F.R. §273.18(c)(1)(ii)(B).

I have reviewed the re-calculated claims and I find that they are correct. While petitioner continues to complain that there are errors, the only arguable error is that the "Correct Budget" gross income limit is incorrect. Ms. Hickman explained that the number is the income reporting threshold, although the form does not call it that. The error is irrelevant. All overpayment calculations compare net income to the net income limit. The gross income limit is not used. For example, in September, 2011 and March, 2012, the calculations show that income was above both the correct gross income limit and the net income limit, so having an incorrect gross income limit on the form does not affect the calculations.

Petitioner's primary claim is that she should have received the 20% earned income deduction for all months. She testified that she always reported her income and provided pay stubs every month. The evidence does not support her testimony. Case notes show that the only income reports were made at renewals and at six-month reports. In 2011 petitioner dutifully reported the end two jobs (not only the [redacted] job but in April, 2011 she reported the end of a job with [redacted]) but did not report the start of the [redacted] job until her December, 2011 renewal and did not report when her income went above the reporting threshold, as she was advised to do in notices that showed the amount of the reporting threshold. I even went so far as to check the Department's computerized document record, which this office had access to, to see if any stray pay stubs were ever scanned into the system. There were none; pay stubs were scanned only contemporaneously with the reviews.

Petitioner now claims that the agency must have lost the stubs she provided. The problem is that no one at the agency would have told petitioner to file her pay stubs monthly; that is not Department procedure. Department procedure is to report increases in income when the increase is above a certain threshold, and I can find no evidence whatsoever that petitioner ever reported an increase except at mandated renewals and reviews. The simple fact is that on June 24, 2011, the agency issued a notice to petitioner telling her that she would receive $367 FS in July and that the gross income budgeted in the determination was $35.25 unearned income. Petitioner took no action to correct the error even though she already was working for [redacted]. There is nothing in the record suggesting that petitioner reported the [redacted] job until the December renewal.

Petitioner complains that the $35.25 unearned income is an error that the agency representatives did not explain adequately. The representatives testified that it was income from a rental property. The testimony makes sense in light of the amount being removed immediately after petitioner provided her 2011 income tax return. More importantly, the amount showed up as income on every notice sent to petitioner in 2011 and up until June, 2012. Petitioner did not question the amount then, and there is no basis to question it now.

I note that while searching the documents record for pay stubs I found petitioner's 2010 self-employment tax return; it showed a net loss of $1,799 and depreciation of $2,222. If the depreciation is added back in, net gain is $423. $423 divided by twelve is $35.25.

Petitioner also complains that no information was provided for the months of October, 2012 through February, 2013. Again, those months are irrelevant as the agency determined that FS in those months was

correct. Petitioner complains that she might have been underpaid in those months, but if she was underpaid, she could have complained at the time. She complains that the agency can look at past months and make changes but she cannot. That is true. Petitioner should know what her income and expenses are every month; if the calculations are wrong for a given month, she can complain and/or appeal. The agency can only base its determinations on the information provided by the FS recipient and the employers that verify information. If the information is wrong, federal law allows the agency to go back and determine if the FS were determined correctly. Thus it is not wrong to skip the figures for the months in which no error was found.

In her letter to the hearing office petitioner asked that she be reimbursed for time she had to take off from work. The Division of Hearings and Appeals does not have any such authority, but I note that this whole issue arose from petitioner's failure to report changes. It is true that the original notices had errors and discrepancies, and those have now been corrected. I note again that in some of the months reviewed by the agency underpayments were found and petitioner received credit, so it is not a one-sided review. It is a correct review based upon petitioner's actual income as provided by her employer.

CONCLUSIONS OF LAW

After a remand by the Division of Hearings and Appeals, the agency correctly re-calculated FS overpayments issued to petitioner between the months of September, 2011 through September, 2013.

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 17th day of November, 2014

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on November 17, 2014.

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