



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/161183

PRELIMINARY RECITALS

Pursuant to a petition filed October 13, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Ozaukee County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on November 11, 2014.

The issue for determination is whether the agency has met its burden to establish that it correctly calculated overpayments of FS against the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Pahoua Vang, ESS

Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Ozaukee County.

2. On July 22, 2011 petitioner applied for FS. He reported income in the home for [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) and that there were 4 persons in the home. See [Exhibit 1](#).
3. On August 1, 2011 an interview was conducted for petitioner's FS. At that time petitioner reported that he was not working and that [REDACTED] was working part-time and receiving unemployment benefits (UC).
4. On August 2, 2011 the agency issued a request for verification to the petitioner. See [Exhibit 2](#). The request was for verification of petitioner's identity, earned income for [REDACTED] ([REDACTED]), and earned income for petitioner ([REDACTED]). The request also contained added text to "please provide ID for all household members – ex. Permanent resident cards". The due date for the requested verification was August 22, 2011.
5. On August 18, 2011 the agency received the identity verification for [REDACTED].
6. On August 22, 2011 the agency issued a request for verification to the petitioner. See [Exhibit 3](#). The request was for verification of petitioner's identity, earned income for [REDACTED] ([REDACTED]), and earned income for petitioner ([REDACTED]). The request also contained added text stating "although employment with [REDACTED] has ended, I still need verification that employment ended. I also need permanent residence cards for ALL household members – I only received Andrey 12/21/93. Thank you." The due date for the requested verification was August 29, 2011.
7. On September 2, 2011 the agency received [REDACTED]'s [REDACTED] paystub from August 26, 2011 and petitioner's verification of his end of employment with [REDACTED]. See [Exhibit 4](#).
8. On September 20, 2011 the petitioner contacted the agency regarding FS. The agency processed this FS application and conducted an interview. The agency mailed the application summary to petitioner the next day.
9. On September 21, 2011 the agency issued a request for verification to petitioner. See [Exhibit 5](#). The request was for petitioner's signature on the FS application and for [REDACTED]'s alien registration status. The due date for the requested verification was October 20, 2011.
10. On September 29, 2011 the agency received petitioner's signed FS application. See [Exhibit 6](#). The application reported earned income in the home from [REDACTED] ([REDACTED]) and [REDACTED] (UC). The application also provided citizenship information for petitioner, [REDACTED] and [REDACTED].
11. On October 11, 2011 the agency processed the information received from petitioner on September 29.
12. On October 12, 2011 the agency issued a notice to petitioner stating that effective September 20, 2011 the household of 5 would receive \$240 in FS, and \$659 in FS effective October 1, 2011. See [Exhibit 7](#).
13. On November 9, 2011 the agency issued a notice of decision to petitioner stating that effective December 1, 2011 the FS would decrease to \$523. The decrease was due to [REDACTED] turning 18 and being a nonqualifying citizen, and therefore the agency considered the household to be a size of 4 for December. See [Exhibit 8](#).
14. On January 23, 2012 the agency issued a six month review form (SMRF) to petitioner in order for the agency to continue FS for petitioner in March. On January 31, 2012 the agency received the SMRF from petitioner. See [Exhibit 9](#). The SMRF was sent back to the petitioner for completion of Section 5, "Has there been a change in other income?". On February 9, 2012 the agency received the completed SMRF indicating no changes in income. See [Exhibit 10](#).
15. On February 15, 2012 the agency issued a request for verification to petitioner. See [Exhibit 11](#). The request was for earned income for [REDACTED] ([REDACTED]) and earned income for petitioner ([REDACTED]). The due date for the requested verification was February 24, 2012.

16. On February 24, 2012 the agency received the earned income verification for [REDACTED] ([REDACTED]). See Exhibit 12.
17. On February 28, 2012 the agency issued a notice of decision to petitioner stating that effective March 1, 2012 the 5 household members were not eligible for FS because the requested verification were not received. See Exhibit 13.
18. On March 16, 2012 the agency received earned income for [REDACTED] ([REDACTED]) with paystub from 3/9/12. See Exhibit 14.
19. On April 9, 2012 [REDACTED] contacted the agency requesting FS. On April 10, 2012 the agency conducted the FS interview. On April 11, 2012 the agency issued a notice of decision to petitioner stating that effective April 9, 2012 the FS for her household of 4 would be \$489, and for May it would be \$668. See Exhibit 15. The only reported income was the earned income for [REDACTED] at [REDACTED].
20. On July 16, 2012 the agency issued a six month review form (SMRF) to petitioner in order for the agency to continue FS for petitioner in September. See Exhibit 16.
21. On August 2, 2012 the agency received the SMRF from petitioner. See Exhibit 17. It reported earned income for [REDACTED] from [REDACTED] and from IRIS (start date of 4/1/12).
22. On August 1, 2014 the agency reviewed petitioner's case for a possible overpayment. The agency requested and received earned income verification for petitioner from [REDACTED] (Exhibit 21) and [REDACTED]/IRIS (Exhibit 20), [REDACTED] from [REDACTED] (Exhibit 19) and from IRIS/TMG (Exhibit 20), and [REDACTED] from [REDACTED] IRIS (Exhibit 20).
23. On August 18, 2014 the agency issued two FS Overpayment Notices to petitioner advising of overpayments from September 20, 2011-November 30, 2011 in the amount of \$1471 due to petitioner's IRIS income not reported (Exhibit 23) and from April 9, 2012- August 31, 2012 in the amount of \$3092 due to [REDACTED]'s IRIS/TMG income not reported (Exhibit 24).
24. On September 30, 2014 the agency revised one of the overpayment claims from \$3092 to \$3072. See Exhibits 22 and 28.
25. The agency admits its error in including [REDACTED] as an eligible FS recipient in the household during all time periods.

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(a). 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); See also FS Handbook, §7.3.1.2, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> and *DHA Final Decision No. FOP/157091* (Nov. 25, 2014).

Here, the agency argues that the petitioner did not report all of his and his wife's income and therefore they received more FS than they were eligible for. This was determined to be client error.

It appears from the testimony at hearing that petitioner argues that for at least one of the times he was required to report income, he did so. Petitioner's wife's testimony was that she mailed in her IRIS/TMG paystubs along with the paystubs the agency did receive (Exhibit 12). The implication made was that the agency somehow lost her paperwork. See also Exhibit 32. I do not find this argument credible. First, the petitioner was presumably providing those documents in response to the request for verification made on February 15, 2012. See Exhibit 11. That request was for the wife's known income from [REDACTED], not IRIS/TMG. Secondly, they certainly had the opportunity to report that income on the SMRF provided

earlier that month. See Exhibit 10. She would have known of that change in income as that IRIS/TMG employment began in December 2011. Thirdly, the agency rebutted this inference by explaining that the document system that the agency uses to store its documents electronically has the capability of searching through the documents to ensure that, should documents be erroneously placed into another client's file, those documents can be found and placed with the correct client.

The second argument made by petitioner was that the agency had not shown why it was correct in counting the group size when it calculated the overpayments. For the overpayment that took place in 2011, the agency originally counted a group size of 5. When calculating the overpayment, the agency counted the group size as 4. This was due to the fact that the agency took ██████ out of the group size count because it had later determined that she was in fact not eligible to receive the FS it had issued for her as she did not meet the citizenship requirements. The agency admits its error in including ██████ as an eligible in the first instance. For the overpayment that took place in 2012, the agency originally counted a group size of 4. This was due to the fact that the agency determined that ██████ turned 18 and was a nonqualifying citizen, and therefore he was not considered part of the FS group. See Finding of Fact #13. When calculating the overpayment, the agency counted the group size as 3 because it was again taking ██████ out.

In response, the agency presented some information it received from the CARES Call Center when it requested assistance from the policy folks at DHS regarding this case. The agency provided that email communication which cited the Process Help Guide, a guide for agency workers who use the CARES system to administer FS. See Exhibit 31 and Process Help Guide found at <https://prd.cares.wisconsin.gov/help/>. The section cited from the Guide was §31.3.6.3, which states in relevant part, "Remember, all adults in the household at any time during the overpayment period are individually liable for the total amount of the claim." I believe this relates to the third argument advanced by petitioner and discussed below. However, despite the lack of firm citation by the agency to explain the group size changes, there exists the federal regulation which explains it. It states, "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). While I understand that the petitioner finds this to be contrary to the agency's requirement to not lookback beyond 1 year when there is agency error, the agency has not calculated these overpayments because ██████ was erroneously included in the household. They were calculated because the petitioner failed to report earned income due to client error. Accordingly, it is following the federal regulation that requires overpayment claims to be calculated based on what the household actually should have received and subtracting that from what they did receive.

The final argument was that ██████ should not be held liable for the overpayment in 2012 as he was no longer in the household. As stated above, all adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4). The petitioner's wife testified that ██████ moved out in March 2012 and moved in with his girlfriend. There was nothing offered to corroborate that statement. When she was asked specifically if it was March, she testified she believed so, but that this occurred in 2012. Thus her own statements show less than certainty. It also does not help that argument when there was no dispute that she had made a verbal report to the agency in *August* 2012 that he had moved out. Without more, I do not find this argument credible.

Based on the foregoing, I must find that the preponderance of the credible evidence establishes that the agency correctly calculated the FS overpayments against the petitioner.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. 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 agency has met its burden to establish that it correctly calculated overpayments of FS against the petitioner.

THEREFORE, it is ORDERED

The petition for review herein 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 5th day of December, 2014

\sKelly Cochrane
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 5, 2014.

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