



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/161190

PRELIMINARY RECITALS

Pursuant to a petition filed on October 10, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Human Service Department in regard to FoodShare benefits, a hearing was held on November 4, 2014, at Racine, Wisconsin.

The issue for determination is whether the Racine County Human Service Department (the agency) correctly determined that the Petitioner was overissued FoodShare benefits.

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: Rhonda Kramer, Lead Economic Support Specialist
Racine County Human Services Department
1717 Taylor Avenue
Racine, WI 53403

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. The Petitioner applied for FoodShare benefits on July 11, 2014. (Exhibits 3 and 7)
3. On July 16, 2014, the Petitioner supplied the agency with two, bi-weekly paystubs; one dated 6/30/14 with gross income of \$1185.39 and one dated 7/15/14 with gross income of \$1138.96. (Exhibit 5)

4. On July 16, 2014, the Petitioner also supplied two semi-monthly check stubs for his wife, FN; one dated June 20, 2014, showing gross income of \$326.25 and one dated July 3, 2014, showing gross income of \$344.38. (Exhibit 6)
5. At that time, the agency only budgeted earned income of \$670.63, because it miscalculated the earned income reported by the Petitioner. (Testimony of Ms. Kramer, Exhibit 3)
6. On October 6, 2014, the agency sent the Petitioner a FoodShare Overpayment Notice, Claim number [REDACTED] indicating that the Petitioner was overpaid \$1,162 in FoodShare benefits for the period of July 11, 2014 to October 31, 2014, due to non-client error. (Exhibit 10)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 10, 2014. (Exhibit 1)
8. There are four individuals in Petitioner's household, the Petitioner, his wife and their two children. However, the Petitioner's wife is not eligible for FoodShare benefits because, she is a non-qualifying immigrant. (Testimony of Petitioner; Testimony of Ms. Kramer; Exhibit 4)
9. The Petitioner received VA benefits in the amount of \$130.94 per month. (Testimony of Petitioner and Ms. Kramer)

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)*, § 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, the agency asserts that an overpayment of FoodShare benefits occurred between July 11, 2014 and October 31, 2014, because it under budgeted the Petitioner's earned income.

In order to be eligible for FoodShare benefits, a FoodShare group¹ must have gross income at or below 200% of the Federal Poverty Level. *FSH §4.2.1.1* All income that is available to the group must be counted. *FSH §4.1.1*

Petitioner's FoodShare group consists of three people; his wife is excluded as a non-qualifying alien. 200% of FPL for three people was \$3,256 until October 1, 2014. *FSH §8.1.1 Release 13-02* After October 1, 2014, it was \$3,300. *FSH §8.1.1 Release 14-03*

Looking at the earned income provided by the Petitioner on July 16, 2014, we have the following income calculations:

$$\$1185.39 + \$1138.96 = 2324.35 / 2 = \$1162.18 \text{ average income per bi-weekly paycheck.}$$

$$\$1162.18 \times 2.15 \text{ average bi-weekly pay periods per month} = \$2498.69 \text{ average monthly earned income.}$$

¹ A FoodShare group is "formed by persons who are in the same food unit and pass all the individual non-financial criteria." *FSH §3.3.1* A Food Unit is made up of "one or more persons who live in the same household and purchase and prepare food together for home consumption." *Id.* "A household consists of all person living in or temporarily absent from the same residence." *FSH §3.3.1*

It is undisputed that the Petitioner receives VA benefits in the amount of \$130.94 per month. Adding this to Petitioner's income we have:

$$\$2498.69 + \$130.94 = \$2629.63 \text{ total income for Petitioner.}$$

“Deeming” means to “allocate income and/or expenses to the food group from an individual not in the food group.” *FSH §4.7.1* Because Petitioner's wife, FN, is a non-qualifying alien, she is not part of the food group. However, her income is available to the food group and must therefore be counted / deemed. *FSH §§ 4.7.1 and 4.1.1*

FN's earned income (paid semi-monthly NOT bi-weekly):

$$\$326.25 + \$344.38 = \$670.63 \text{ monthly income (Exhibit 6)}$$

Because FN is a non-qualifying immigrant, her income is pro-rated between those in and out of the FoodShare group. *FSH §4.7.5*. Thus, the amount of FN's income that is deemed to the Petitioner would be:

$$\begin{aligned} \$670.63 / 4 \text{ people} &= \$167.66 \text{ per person in the household} \\ \$167.66 \times 3 \text{ people in the FoodShare group} &= \$502.98 \text{ income that is deemed to the FoodShare Group.} \end{aligned}$$

Total Gross Income for Petitioner's FoodShare Group works out as follows:

$$\begin{aligned} &\$2498.69 \text{ Petitioner's earned income} \\ &+ \$130.94 \text{ Veteran's benefits (unearned income)} \\ &+ \$502.98 \text{ Deemed earned income from Petitioner's wife} \end{aligned}$$

$$\$3132.61 \text{ Total Gross Income for Petitioner's FoodShare Group}$$

Although the Petitioner met the financial eligibility criteria discussed above, the agency only budgeted earned income of \$670.63. (See Exhibits 7 and 10) Consequently, an overpayment of FoodShare benefits had to have occurred. However, I am not confident that the calculation of the overpayment was done correctly.

First, looking at the overpayment worksheet attached to Exhibit 10, the agency shows unearned income of \$533.31, but there is nothing in the record to support that amount. The only testimony concerning unearned income related to Petitioner's Veteran's benefits.

Second, it is unclear whether the agency allowed the 20% earned income deduction on the \$502.98 of earned income from FN, as required by *FSH §4.7.5.1*

Third, it appears the agency determined that the Petitioner is a disabled veteran under *FSH 3.8.1.2*, because the fair hearing summary discusses a “pre-tax” deduction, which I can only conclude refers to health insurance premiums paid from Petitioner's pay check. However, the record does not contain any verification of Petitioner's status as a disabled veteran and the overpayment worksheet did not allow for an excess medical expense deduction.

For all the foregoing reasons, the agency will have to review its overpayment calculations. It must then issue to the Petitioner a new overpayment notice and new worksheets. If the Petitioner disagrees with the new calculations, he must file a NEW request for fair hearing.

CONCLUSIONS OF LAW

1. The agency correctly determined that the Petitioner was overpaid FoodShare benefits.
2. The agency did not correctly calculate the amount of the overpayment.

THEREFORE, it is

ORDERED

That the agency review and recalculate the amount of the overpayment, allowing for the correct earned income deductions and excess medical expense deductions. The agency shall then issue to the Petitioner a new overpayment notice and worksheets. The agency shall take all administrative steps to complete this task within ten days of this decision.

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.

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 14th day of November, 2014. 2014

\s
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 14, 2014.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability