

2. On May 5, 2012, the agency sent the Petitioner's wife a notice indicating that she would be receiving \$507 per month in FoodShare benefits for a household of five people, that included the Petitioner. (Exhibit 2)
3. That same notice indicated that the income that the agency was counting was Petitioner's self-employment income of \$107.00 per month and his wife's unemployment insurance benefits of \$350.00 per week. (Id.)
4. On May 14, 2012, the Petitioner began working full time for a [REDACTED]. (Testimony of Petitioner; Exhibit 3)
5. Neither the Petitioner, nor his wife, ever reported the employment. (Testimony of the Petitioner)
6. On August 28, 2014, the agency sent the Petitioner a FoodShare Overpayment Notice, Claim # [REDACTED], indicating he was overpaid FoodShare benefits in the amount of \$2,033.00 for the period of July 1, 2012 through October 31, 2012. (Exhibit 6)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 14, 2014. (Exhibit 1)

DISCUSSION

Federal law generally requires that all FoodShare overpayments be recovered, regardless of whether the recipient or the county is at fault. Those regulations provide, in relevant part, as follows:

- (a) **Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH) § 7.3.1.1.

In an administrative hearing concerning the propriety of an overpayment of benefits, the agency has the burden of proof to establish the action taken by the agency was correct. The Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency.

Petitioner does not dispute the fact that he obtained employment at a [REDACTED] and that his wife and he did not report that new employment.

As there is no evidence to indicate that Petitioner's household included an elderly, blind or disabled (EBD) member, the FoodShare Wisconsin Handbook (FSH) states that the Petitioner had to report any changes in income that put the household over 130% of the Federal Poverty Limit (FPL):

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units [i.e., household's which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% (8.1.1) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...
FSH, §6.1.1.2.

This follows Federal law which directs that States may:

“...require households with income that are assigned 6-month or longer certification periods to report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.” 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

Between May 1, 2012 and September 30, 2012, 130% of FPL for a household of five people was \$2,836.00. *FSH, §6.1.1.2 – release 11-04*

Page 5 of the notice sent to the Petitioner’s wife on May 5, 2012, explained that the Petitioner’s wife needed to report when household income exceeded \$2,836. (See Exhibit 2)

In May 2012, Petitioner’s household income consisted of the following:

\$1997.89 Petitioner’s first paycheck
 +\$1505.00 Petitioner’s wife unemployment income
 (\$350 per week x 4.3 average weeks per month =\$1505 per month)
 +\$107.00 Self Employment Income

\$3609.89 Total income for May 2012

\$3609.89 is well over the 130% FPL \$2836 reporting threshold. Consequently, the Petitioner was required to report the increase in income by June 10th, which would have affected benefits in July 2012.

Accordingly, it is found that the agency correctly determined that the Petitioner was over-issued FoodShare benefits during the time in question.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner was overpaid FoodShare benefits between July 1, 2012 and October 31, 2012.

THEREFORE, it is

ORDERED

That the petition is 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 Milwaukee,
Wisconsin, this 16th day of December, 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 December 16, 2014.

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