



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/161325

PRELIMINARY RECITALS

Pursuant to a petition filed October 16, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency was correct in its issuance an overpayment notice of 9/19/14 in claim # [REDACTED] indicating an overissuance of \$8,894.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner collected FS during the overpayment period of 10/1/13 to 8/31/14 in the amount of \$8,894.

3. During this time, petitioner and her husband operated various businesses. These included a [REDACTED], [REDACTED] in [REDACTED], and [REDACTED].
4. The full tax information for all these ventures was not provided until September 2014 at which time the agency input the tax information (ex. #1) and determined there should not have been eligibility.
5. The agency issued an overpayment notice of 9/19/14 in claim # [REDACTED] indicating an overissuance of \$8,894.
6. Petitioner appealed.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS 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), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

In determining the amount of FS to be issued each month, the county must budget all earned and unearned income of the FS household. 7 C.F.R. §273.9(b). This includes child support, Supplemental Security Income (SSI), SSDI, child support, and W-2 payments received by household members. FoodShare Wisconsin Handbook, Appendix section 4.3.1.

FS benefits are calculated pursuant to 7 C.F.R. § 273.9. The maximum FS allotment amounts, based on household size, are listed at FoodShare Wisconsin Handbook, Appendix 8.1. In general, a household must *initially* pass the so-called “gross income limit”. The FS eligibility calculation process allows for certain deductions from gross income to arrive at a “net income” then tested against a “net income limit”. But this process only occurs if the household *first* passes the gross income test. If the applying household does not pass the gross income test, then the net income test, and the applicable deductions, are not even reached.

In this case, petitioner’s FS household must first pass the gross income eligibility limit. Petitioner’s FS household of four has a categorical gross income limit of \$5,162 per *FoodShare Wisconsin Handbook*, §8.1.1 (200% FPL). Petitioner’s household’s gross income was above the gross income eligibility limit for a household of six.

The crux of petitioner’s argument is that the Department attributed to the household a higher gross income than what the household was actually realizing. For example, petitioner explains that the Department budgeted as income to petitioner funds that were actually used to pay loans that were outstanding. First, I note that an individual who has wages of \$50K per year is not eligible for FS just because he has \$50K of outstanding credit card debt. But, I realize this is not that situation. This is a situation involving businesses and depreciation and expenses. That is why the FS program has created applicable worksheets to be used to determine monthly income to be attributed for FS purposes. The agency employed those worksheets for the different businesses and determined a monthly income exceeding \$11,000.

In this case, the agency took data directly from the tax returns provided by petitioner. The data were calculated based on the tax returns and consistent with the instructions of the worksheets. The conclusion is that the household was well-over the gross income limit.

I understand that petitioner takes issue with the way he form calculates some funds as income that were used to operate the business or pay business debt. She argued that because they used the money to pay off loans that it should not be considered income. But, I can identify no error with the agency's application of the worksheets in exhibit #1, nor does petitioner.

CONCLUSIONS OF LAW

The Department did not err in its determination of FS ineligibility during the overpayment period and the resulting overpayment.

THEREFORE, it is ORDERED

That this appeal 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 Madison,
Wisconsin, this 17th day of November, 2014

\sJohn P. Tedesco
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 17, 2014.

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