



FH

Redact

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

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

FOP/161660

PRELIMINARY RECITALS

Pursuant to a petition filed November 01, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Chippewa County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 16, 2014, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare that occurred because of the agency's error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

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

By: Rhonda Kimmer

Chippewa County Department of Human Services
711 N. Bridge Street
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [Redacted]) is a resident of Chippewa County.
2. The county agency notified the petitioner on September 8, 2014, that it would seek to recover \$2,089 in FoodShare she received from September 1, 2013, through August 31, 2014, because it

incorrectly failed to include her tribal per capita payments when determining her income and benefits.

3. The petitioner has received a \$400 per capita payment from the [REDACTED] each month since before September 1, 2013.
4. Until September 2014, the county agency did not counted the petitioner's per capita payment as part of her income when determining her FoodShare allotment.

DISCUSSION

FoodShare agencies must “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This means that it must recover all FoodShare overpayments regardless of whose error caused the overpayment. The county agency seeks to recover \$2,089 in FoodShare the petitioner received from September 1, 2013, through August 31, 2014, because it failed to count the \$400 monthly per capita payment she receives from her tribe. It does not seek to recover any benefits she received before then because Wisconsin limits recovery to one year if the overpayment occurred because of the agency's error. *FoodShare Wisconsin Handbook*, § 7.3.2.1.; see 7 CFR § 273.18(c)(1).

A recipient's FoodShare allotment depends upon her household's size and total income. Household income includes “all income from whatever source” unless FoodShare regulations specifically exclude it. 7 CFR § 273.9(b). Unearned income includes “direct money payments from any source which can be construed to be a gain or benefit.” 7 CFR § 273.9(b)(2)v. FoodShare regulations do not exclude tribal per capita payments from unearned income. See generally 7 CFR § 273.9(c).

The petitioner does not challenge the agency's calculations. Rather she believes that it unfair to require her to repay an error that occurred because of the agency's error. I understand her argument. She assumed the agency knew what it was doing. Now, because it did not she is expected to repay a debt that is well beyond her means. Nevertheless, my power as an administrative law judge is limited to the four corners of the law and does not allow me to consider the fairness of the situation. Therefore, I must uphold the agency's decision.

CONCLUSIONS OF LAW

The county agency correctly seeks to recover an overpayment of FoodShare the petitioner received because it failed to determine her income accurately.

THEREFORE, it is

ORDERED

The petitioner's 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 December, 2014

\sMichael D. O'Brien
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 December 17, 2014.

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