



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



FOP/159493

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 26, 2014, at Racine, Wisconsin.

The issue for determination is whether the agency correctly determined that Petitioner was overissued FoodShare because she did not report that her daughter was out of the home at school and because of underreporting income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Dean Landvatter

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Racine County.
2. Petitioner was notified that she had been overissued FoodShare as follows:
 - 2/1/2012 – 5/31/2012 in the amount of \$508.00 by over reporting household composition

- 8/1/2012 – December 31, 2012 – in the amount of \$1741.00 by under reporting income
 - 10/1/2012 – 5/31/2013 – in the amount of \$480 for 1/2103 through 5/2013 and an undetermined portion of the \$1741 just noted by over reporting household composition.
3. Petitioner’s daughter was out of Petitioner’s home during the school terms included the time periods of February 2012 through May 2012 and October 2012 through May 2013. This was not reported to the agency.
 4. Petitioner reported that her hours had been reduced from 40 to 32 per week in August 2012. Petitioner continued, however, to work 40 hours per week. Her income did not decrease during the time period.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a 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 *Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH), Appendix 7.3.2*. Overpayments due to “client error” may be recovered for up to six years after discovery. *FSH, 7.3.2.1*. The overpayment alleged here is a client error.

Finally, in an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A Petitioner must then rebut the agency’s case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

Here Petitioner reported a change in her hours suggesting that her earning were changing but her earnings did not change. This created the overpayment as alleged by the agency for underreporting income. See Exhibit # 2G.

As for over reporting household composition, Petitioner’s daughter was out of the home at school during the time periods alleged by the agency. Petitioner completed an online renewal/application form in February 2012 and reported that the daughter was in the home. This was not correct. She again reported her in the home on a June 2012 six month report form, this was correct. She did not report that she was again out of the home in the fall of 2012. In January 2013 Petitioner reported that the daughter was in the home on an online reporting form. This was incorrect.

Petitioner had an obligation to accurately report household composition at review and on report forms. See generally *FSH, Chapter 3*. Nonetheless, the *FSH* indicates reduced reporting requirements as to household composition between certification periods. *FSH, §6.1.1.2*. Thus I conclude that Petitioner did not have to report her daughter out of the home during the period of October 2012 until the January 2013 report which would have affected benefits in February 2013 (*FSH, §6.1.4*). This this portion of the overpayment will have to be rescinded.

CONCLUSIONS OF LAW

That Petitioner has been overissued FoodShare as alleged by the agency except for that portion of the overissuance caused by over reporting household composition during the period from October 2012 through January 2013.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to rescind that portion of the overissuance involved here that is attributable to over reporting household composition during the months of October 2012 through January 2013. This must be done within 10 days of the date of this Order.

In all other respects, 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 Milwaukee,
Wisconsin, this 2nd day of January, 2015

\sDavid D. Fleming
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 January 2, 2015.

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