



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/162031

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 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 December 18, 2014, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner was overissued FoodShare benefits and, if so, whether the overissuance was correctly calculated.

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: Jose Silvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated November 14, 2014. It informed Petitioner that he had been overissued FoodShare in the amount of \$600.00 for the months of August, September and October 2012 (claim # [REDACTED]).

3. The agency sent Petitioner a Notice of FoodShare Overissuance dated November 14, 2014. It informed Petitioner that he had been overissued FoodShare in the amount of \$497.00 for the months of November and December 2013 and January 2014 (claim # [REDACTED]).
4. The basis for this FoodShare overissuance claim was client error. Petitioner did not report to the agency that his household income had exceeded 130% of the Federal Poverty Level (FPL) for the \$600.00 overpayment and failed to report that he was working at all for the \$497.00 overpayment
5. Petitioner's FoodShare household size is 1. The 200% (categorical eligibility), 130% (reporting required) and 100% (net income limit) of the Federal Poverty Level (FPL) amounts, respectively, for a group of 1 during the time involved here were (see *FoodShare Eligibility Handbook at §8.1.1*):
 - \$1816/\$1180/\$908 from 10/1/11 to 9/30/12
 - \$1862/\$1211/\$931 from 10/1/12 to 9/30/13
 - \$1916/\$1245/\$958 from 10/1/13 to 9/30/14.
6. Petitioner's household is not an elderly, blind or disabled household as defined in FoodShare regulation.
7. In June 2012 Petitioner's gross income was \$1312.25. In July 2012 it was \$1186.56. In August 2012 it was \$1370.99. In September 2012 it was \$1373.77. In October 2012 it was \$1202.03.
8. Petitioner filed a six month report form on September 28, 2013; he did not report employment on that form but was working. He had earned income continuously for the months of June 2013 through January 2014 with gross earnings of \$1218 in August 2013, \$1079.98 in September 2013, \$1138.65 in October 2013, \$1292.98 in November 2013, \$1099.67 in December 2013 and \$802.53 in January 2014.

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), §7.3.2*.

As Petitioner's household is not an elderly, blind or disabled (EBD) household, the FoodShare Wisconsin Handbook (FSH) states that she had to report income at the point that household income exceeded 130% of the 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.)

Once a household passes the gross income test the following deductions are applied (*FSH*, at § 4.6):

- (1) a standard deduction, 7 CFR § 273.9(d)(1);
- (2) an earned income deduction - which equals 20% of the household's total earned income (except as modified in overpayment calculations and as noted above), 7 CFR § 273.9(d)(2);
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 CFR § 273.9(d)(3);
- (4) dependent care deduction for child care expenses, 7 CFR § 273.9(d)(4); and
- (5) shelter and utility expenses deduction – the utility allowance was a standard during the time involved here and the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 CFR § 273.9(d)(5). There is a cap on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH*, §§ 4.6.7.1 and 8.1.3.

Also relevant here are the following provisions from the *FSH*:

4.2.1.1 Categorical Eligibility Introduction

Most FoodShare groups are considered categorically eligible if their gross income is at or below 200% FPL and the language describing "JobNet" Services, a partially TANF funded service that all food unit members are authorized to receive, is issued to the group on a CARES generated notice of decision.

...
FSH, §4.2.1.1.



7.3.2.1 Client and Non-client Error

When calculating the overissuance, consider the FS group’s reporting requirements. Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported.

Use converted income to determine ongoing benefit eligibility for the overissuance calculation. Only use the income and expenses reported or required to be reported for each month of the overissuance period. In claim calculations, disregard income that was not previously reported and was not required to be reported.

...
FSH, §7.3.2.1.



...
 In overissuance calculations, do not apply the 20% earned income disregard to earned income that was required to be reported but was not reported timely. Disregard income that was not previously reported and was not required to be reported due to reduced reporting requirements. If expenses were reported correctly at the time of the overissuance, use those same expenses when calculating the overissuance. If not, then do not use the expenses in the calculation.

...
FSH, §7.3.2.1; also see 7 CFR 273.18(c)(1)B and 7 CFR 273.120d); emphasis added.



...
Income Test

FS groups that are not categorically eligible must pass the net income test based on net income limits and group size. Categorically eligible FS groups do not have to pass this test; however if net income exceeds the FS net income limit, FS groups of 3 or more people may not receive FS

benefits. If the group's net income equals or is less than the limit, the group might be eligible for benefits.

...
FSH, §1.1.4.



7.1.1.4 Minimum Allotment for 1 or 2 Person Food Units

Categorically eligible food units that include 1 or 2 persons are eligible for a minimum \$16 allotment, except for the initial pro-rated benefit.

FSH, §7.1.1.4

Reading all of the above together, Petitioner did have an obligation to report employment and income in excess of 130% of the Federal Poverty level. He did not report exceeding that 130% threshold beginning in June 2012 thus creating an overpayment as of August 2012. Further, he did not report working at all on the September 2013 six month report form creating the overpayment for November 2013 through January 2014. Nonetheless, Petitioner was categorically eligible for FoodShare at all times relevant here as he was never over the gross income limit and the net income limit not applicable. Thus he was eligible for the \$16.00 minimum FoodShare allotment as a categorically eligible individual. Further, Petitioner was under the 130% threshold in October 2012 and the FSH indicates that income not required to be reported is to be disregarded, thus there is no overpayment for October 2012. The agency will have to redetermine the amount of the overissuances as noted below. Finally, I note that the overpayment calculation for January 2014 appears to follow the above and I see no error.

Petitioner's defense here was that he always reported his work and earnings and that the overpayment should have been discovered earlier. The record does not, however, show that the proper reporting was made by Petitioner and the agency may recover back six years where the required reports are not made.
FSH, §7.3.2.1.

CONCLUSIONS OF LAW

1. That the evidence does demonstrate that Petitioner was overissued FoodShare for August and September 2012 as he did not report income in excess of 130% of the Federal Poverty Level but not necessarily in the amount determined by the agency as Petitioner was categorically eligible for FoodShare.
2. That Petitioner was not overissued FoodShare for the month of October 2012 as his income was under the 130% reporting requirement.
3. That the evidence does demonstrate that Petitioner was overissued FoodShare for November and December 2013 and January 2014 as he did not report employment or income in excess of 130% of the Federal Poverty Level but not necessarily in the amount determined by the agency for the months of November and December 2013 as Petitioner was categorically eligible for FoodShare.

THEREFORE, it is

ORDERED

This matter is remanded to the agency with instructions to reverse the overpayment as to October 2012 and to redetermine the amount of the overpayment for August 2012, September 2012, November 2013 and December 2013. This must be done within 10 days of the date of this Decision.

As for January 2014 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 27th day of January, 2015

\sDavid D. Fleming
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 January 27, 2015.

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