



FH

Redact

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

In the Matter of

Redact

DECISION

FOP/162143

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Taylor County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 15, 2014, at Medford, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact

Taylor County Department of Human Services
540 E. College Street
Medford, WI 54451-2027

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # Redact) is a resident of Taylor County.
2. The petitioner has worked for the local school district since 2006. Each year she works from January to the beginning of June and from September to December.

3. On October 28, 2014, the county agency notified the petitioner that it would seek to recover \$372 in FoodShare she received from April 1 through June 30, 2013, and \$315 she received in November 2013 because she did not report that she had returned to work.

DISCUSSION

The amount of FoodShare one receives depends upon household size and net income. A recipient must report any change in income large enough to affect benefits within 10 days. Agencies must then act on that change the month after it is reported. 7 CFR § 273.12(a)2 and (c)(2). Since 2006, the petitioner has worked as an assistance at the local school district from January through the beginning of June and from September to December. In 2013, the agency continued to determine her FoodShare allotment on her income when she was not working even though she had returned to work. If she had reported this change within 10 days and the agency had acted on the change the next month, it would have affected her benefits in April and then in November 2013. The additional benefits she received because the agency did not use her correct income was \$372 from April 1 through June 30, 2013, and \$315 in November 2013. She does not challenge these figures but argues that because her work schedule does not vary from year to year the FoodShare agency should have automatically adjusted her benefits. The agency seeks to recover the entire amount.

It certainly would be nice if the agency had a way to account for these predictable income fluctuations, but there is no legal requirement that it do so. And even if it had the means to automatically adjust income, the petitioner would still have to repay the overpayment if the agency failed to adjust her income and allotment. This is because state 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 regulation requires the agency to recover all overpayments, regardless of whose error caused the overpayment. Because the petitioner received \$687 more in FoodShare than she was entitled to, she must repay that amount.

CONCLUSIONS OF LAW

The FoodShare agency correctly determined that the petitioner must repay an overpayment of FoodShare.

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 5th day of January, 2015

\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 January 5, 2015.

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