



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/162147

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Fond du Lac County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on February 19, 2015. The hearing was a rehearing granted by the Division of Hearings and Appeals on February 3, 2015.

The issue for determination is whether the county correctly determined an FS overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Deborah Bohlman
Fond du Lac County Dept. of Social Services
50 N. Portland St.
Fond du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.
2. Petitioner received benefits for herself and two children in 2013. In August, 2013, petitioner reported that she no longer was employed by [REDACTED], but was then employed at [REDACTED].
3. The county obtained verification of the new income showing that petitioner worked 40 hours per week at up to \$10.50 per hour. The county worker was concerned because petitioner's pay stubs

showed higher weekly hours, but the employer verified that prospectively petitioner was expected to work only 40 hours per week. On August 22, 2013, the county informed petitioner that she would receive \$227 monthly FS beginning October 1, 2013, based upon \$1,758.70 gross monthly income. The notice told petitioner that she needed to report if her monthly income rose above \$2,069.

4. In September the employer sent another verification form showing that petitioner was working only 36 hours per week. By a notice dated October 4, 2013, the county informed petitioner that FS would increase to \$250 effective November 1 based upon \$1,625.40 monthly income. The notice again informed petitioner that she should report an increase to over \$2,116 monthly.
5. In 2014 the county received state wage matches showing higher than budgeted income. The county obtained petitioner's actual income from [REDACTED] in 2013, and it showed that her income was \$3,316 in August, 2013, \$2,251 in September, \$3,227 in October, and \$2,179 in November. The county determined that the income figures budgeted for FS were incorrect, and that FS should have been issued at a reduced rate for October and November.
6. By a notice dated November 3, 2014, the county informed petitioner that she was overpaid \$529 FS in October and November, 2013, claim no. [REDACTED].

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

Petitioner testified that she did not report higher income because she never expected to receive higher income. She kept being called in to work extra hours by the employer because other staff would miss work or quit, and then the employer would bring on new staff so it would appear that petitioner's hours would be reduced again, only for the same cycle to happen again. I am sympathetic to petitioner because it appears that the employer was the real culprit by insisting to the county that petitioner's hours would be reduced when in fact they were not. Nevertheless, an FS overpayment must be recovered regardless of the source of the error, and the error resulted from petitioner, through her employer, under-reporting income. Had petitioner's income been budgeted correctly, her net income would have been over the limit in October and November, and thus the \$539 FS issued those two months must be considered an overpayment.

Petitioner also stated that she is unable to repay the overpayment. This hearing is only to determine what petitioner owes, if anything. The Division of Hearings and Appeals cannot reduce the amount based upon ability to pay; any repayment must be through the Public Assistance Collection Unit.

CONCLUSIONS OF LAW

The county correctly determined that petitioner was overpaid FS in October and November, 2013 because her prospective income was under-reported in those two months.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 23rd day of February, 2015

\sBrian C. Schneider
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 February 23, 2015.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability