



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/162398

PRELIMINARY RECITALS

Pursuant to a petition filed December 4, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regards to overpayments of FoodShare benefits (FS), a hearing was held on December 30, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid \$350 of FS from September, 2013-August, 2014, due to a non-client error in budgeting shelter expenses.

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: Simone Johnson, HSPC
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. She was the casehead of a FS household of 1 person between September 1, 2013, and August 31, 2014.
2. The petitioner paid \$668 per month in rent in September, 2013, and verified that fact to the agency on September 9, 2013. In October, 2013, she began to receive rent assistance, and her rent decreased to \$171 per month in each of the six months from October, 2013 – March, 2014.

3. On October 17, 2013, the petitioner reported to the agency to report her specific apartment number for her address of record as entered in Case Comments for her case; but Case Comments do not reveal any report of her rent decreasing in October, 2013, until review on March 7, 2014. See, Exhibit #1, at pp. 11-12.
4. The petitioner received unearned income in each month in the tested period identified in Finding of Fact #1, of \$804.78 in SSI benefits, plus \$95.99 in SSI-E benefits. The agency budgeted both income streams in the entire test period. The SSI-E sum was auto-updated by the CARES benefits system on July 27, 2013, and added to the petitioner's ongoing budget; but it was not actually countable income.
5. On or about March 7, 2014, the petitioner attended a re-certification interview for FS at the agency and reported for the first time that her rent was actually \$171 per month, because she was receiving a rent subsidy. She had been receiving this subsidy since October, 2013.
6. On November 21, 2014, the agency issued a FoodShare Overpayment Notice to the petitioner informing her that she had been overpaid a net amount of \$350 of FS from September 1, 2013, to August 31, 2014, due to a failure to report accurate shelter expenses due to a non-client error. The agency determined that the petitioner had been underpaid \$279 of FS in September, 2013, and during the period of April – August, 2014; and overpaid \$629 in that period; leaving \$350 due. In addition, the agency determined that the petitioner was underissued in the period of September – December, 2014, in the total amount of \$172.
7. The underissuance of \$172 for the period of September – December, 2014, was then offset against the net overpayment of \$350 for the period of September, 2013 – August, 2014, meaning that the balance remaining due from the petitioner is \$178 of the \$350.
8. The petitioner filed an appeal with the Division of Hearings & Appeals on December 4, 2014, contesting the correctness of the overpayment determination of November 21, 2014, in any amount.

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2).

Here, the petitioner reported at re-certification renewal on March 7, 2014, during an interview, that her rent had decreased from \$668 per month to \$171, because she had been receiving rent assistance. There is no indication that it was previously reported, so that would normally be a “client error” causing the overpayment of FS. However, here, the agency *also* had erroneously, and admittedly, included the SSI-E benefit income as budgeted income for FS from September, 2013- August, 2014. That is a clear and unequivocal error where the agency workers should have known better. See, FoodShare Wisconsin Handbook, § 4.3.4.3. Thus, the overpayment claim was ultimately denominated “nonclient error”.

I have reviewed the overpayment computations after the agency inserted the correct rent and deleted the SSI-E income from the budget, and I can find no error. Nor has the petitioner pointed to any specific computational error. In addition, I have reviewed the calculation of the offsets, and find that the agency correctly maintains a balance due of \$178 on the original debt after application of offsets.

The agency overpayment determination is sustained; and the petitioner's appeal must be dismissed.

CONCLUSIONS OF LAW

That the Department correctly determined that the petitioner was overpaid a net total of \$350 in the period of September 1, 2013, to August 31, 2014, due to a nonclient error in budgeting income; and a \$178 balance remains due on FS overissuance Claim No. [REDACTED].

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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 16th day of January, 2015

\sKenneth D. Duren, Assistant Administrator
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 16, 2015.

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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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