



FH

Redact

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

In the Matter of

[Redacted]
[Redacted]
[Redacted]

DECISION

FOP/162458

PRELIMINARY RECITALS

Pursuant to a petition filed December 4, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by Waushara County Human Services to recover FoodShare benefits (FS), a hearing was held on January 22, 2015, by telephone.

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: [Redacted]
Waushara County Human Services
P.O. Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a resident of Waushara County.
2. Petitioner receives FS as part of a two-person household with his wife. In April, 2014 they had an eligibility review, and beginning May 1 they received \$290 FS based upon \$1,021.40 per month income. They were told in an April 25 notice that they needed to report an increase in income above \$1,310 per month.

3. Petitioner's wife began to work as a paid caretaker for her mother in early June, 2014. She was paid \$150 cash per week. She did not report the new work to the FS agency. Monthly income rose above \$1,310.
4. The county discovered the caretaker employment in September. Petitioner's wife acknowledged receiving the income but stated that she thought that she did not have to report such employment.
5. By a notice dated November 17, 2014, the county informed petitioner that the household was overpaid \$386 in FS in August and September, 2014, claim no. Redact. The overpayment was determined by adding the caretaker income to the FS budget and calculating the amount of FS that would have been paid.

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).

In determining the amount of FS to be issued each month, the county must budget all of the recipients' nonexempt income. 7 C.F.R. §273.9(b). Income paid in cash is not exempt, and thus must be reported to the agency.

I have reviewed the calculations, and they are correct. It does not matter that the failure to report the income was due to a simple error (I note that the overpayment was listed as "client error," not fraud, so even the agency understood that the error was not intentional). Because the agency must recover FS overpayments caused by any reason including agency error, I conclude that the overpayment was determined correctly.

CONCLUSIONS OF LAW

The county correctly determined an FS overpayment caused by the household's error of failing to report a caretaker job paid in cash.

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 26th day of January, 2015

\sBrian C. Schneider
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 26, 2015.

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