FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/162592

PRELIMINARY RECITALS

Pursuant to a petition filed December 12, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Northern IM Consortium to recover FoodShare benefits (FS), a hearing was held on February 11, 2015, by telephone. A hearing set for January 14, 2015 was rescheduled at the petitioner's request.

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

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Beulah Garcia
Northern IM Consortium
10610 Main Street
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Wood County.
2. In the past years petitioner has resided with her husband and their two children. Petitioner's husband has not been eligible for FS or Medical Assistance due to citizenship.
3. In June, 2012, petitioner reported that her husband was working and the income was verified. Effective August 1, 2012 FS were reduced from $526 per month to $172 based upon $580 weekly income from the job. Prior to that the only income in the system was petitioner's income from [redacted].

4. The agency later discovered that petitioner's husband started working in January, 2012, and it eventually did an overpayment for the months of January through July, 2012. On November 3, 2014, the agency informed petitioner that she was overpaid $3,046 in FS during that period because income was not reported timely, claim no. 3900418343. Petitioner had contact with the agency to contest the amount of income budgeted. The agency then requested verification of the income from the employer. At that time it was discovered that he actually started working in January, 2011, and that his income after July, 2012 was substantially higher than had been verified.

5. By notices dated January 7, 2015, the agency informed petitioner that was overpaid an additional $4,563 in FS from April 1 through December 31, 2011, claim no. [redacted], and $978 from August 1, 2012 through July 31, 2013, claim no. 9900423139.

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).

The income of a household member who is ineligible for FS must be reported because it can be deemed to the eligible household members. Handbook, App. 4.7.3. The calculations for deeming are found in the Handbook, App. 4.7.5.1. Based on the calculations 75% of petitioner's husband's gross income would be deemed to the household, with appropriate deductions following in the calculation.

Petitioner testified that she was told that her husband's income would not be counted until her received a social security number. I can find nothing in the policy stating as such, but it explains why petitioner did not report his job until June, 2012. She also testified that she thought she had reported all income. It is true she reported income, but the rules also require increases in income to be reported, and it is evident that his income increased after the report (the big increase occurred in February, 2013).

I conclude that the overpayments were determined correctly. I have reviewed the calculations and find no errors, and petitioner mentioned no errors in the calculations.

CONCLUSIONS OF LAW

The agency correctly determined FS overpayments from April, 2011 through July, 2013 caused by petitioner's failure to report the income of a household member and later to fail to report increases in the income.

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 17th day of February, 2015

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\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 17, 2015.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability