



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

FOP/162781

PRELIMINARY RECITALS

Pursuant to a petition filed December 22, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on January 20, 2015, at Milwaukee, Wisconsin.

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

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted signature
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Milwaukee County.
2. Petitioner receives FS for herself and three children. In January, 2014, petitioner reported to the agency that her hours were increasing, and the agency sent the employer a verification form. The employer reported that petitioner would be working 40 hours per weeks at \$13.91 per hour, and the agency determined FS based upon the income determined from the report.
3. By a notice dated January 20, 2014, the agency informed petitioner that FS would be reduced from \$333 to \$203 effective March 1, 2014 based upon income of \$2,392 per month.

4. Petitioner had a review in April, and effective May 1 her FS increased to \$395 monthly based upon income of \$1,786. Again the agency used just the hourly pay (petitioner had less hours at that time) and did not account for bonuses and commissions.
5. Petitioner actually earned more than reported because she also received bonuses and commissions. The agency discovered the error in late September, 2014. Petitioner's actual monthly income in January, 2014, for example, was over \$3,700 instead of the budgeted amount of under \$2,000.
6. By a notice dated December 17, 2014, the agency informed petitioner that she was overpaid \$1,519 in FS between February 1 and October 31, 2014 because she failed to report income correctly, claim no. Redact.

### 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). The income to be budgeted includes not only hourly wages but also income from bonuses and commissions.

Petitioner testified that she provided all of her information and the agency made the error. As noted above the agency must recover an overpayment even if it was caused by agency error. I disagree that the error was made by the agency, however. Petitioner did not report her bonus/commission income, and the employer also did not report it in the verification. Notices were issued to petitioner saying that her monthly income was first \$2,392 and then \$1,786. In many of the months in question the actual income was substantially higher (\$2,972 in February, \$4,067 in July, \$2,587 in August, and \$2,915 in October). Petitioner did not report the higher income until late September.

I have reviewed the calculations and find no error in them. I conclude that the overpayment was calculated correctly.

### CONCLUSIONS OF LAW

Petitioner was overpaid \$1,519 in 2014 FS because she failed to report her income correctly.

**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

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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 January 26, 2015.

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