



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

In the Matter of:



DECISION



The attached proposed decision of the hearing examiner dated February 19, 2015, is modified as follows and, as such, is hereby adopted as the final order of the Department.

PRELIMINARY RECITALS

Pursuant to a petition filed December 29, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on January 21, 2015.

The issue for determination is whether it was correct to establish the following 3 Claims against petitioner for alleged overpayments of FS spanning the time period July 25, 2011 to August 31, 2013 in the total amount of \$16,052.00:

- (1) Claim Number 1900421551; July 25, 2011 to June 30, 2012; \$7,037.00;
- (2) Claim Number 6900421586; July 1, 2012 to June 30, 2013; \$7,679.00; and,
- (3) Claim Number 2900421562; July 1, 2013 to August 31, 2013; \$1,336.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

BY: Pang Thao-Xiong, Income Maintenance ["IM"] Specialist Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. MiLES established the following 3 Claims against petitioner for alleged overpayments of FS spanning the time period July 25, 2011 to August 31, 2013 in the total amount of \$16,052.00:
 - (1) Claim Number [REDACTED]; July 25, 2011 to June 30, 2012; \$7,037.00;
 - (2) Claim Number [REDACTED] July 1, 2012 to June 30, 2013; \$7,679.00; and,
 - (3) Claim Number [REDACTED] July 1, 2013 to August 31, 2013; \$1,336.00.
3. The alleged FS overpayment in *Findings of Fact #2*, above, allegedly resulted from petitioner's failure to verify income and failure to report income.
4. In calculating the alleged FS overpayment in this matter MiLES did not use the quarterly wages for petitioner's FS household as reported by the employer to the state; instead, MiLES determined that petitioner was completely ineligible for FS during the time period in question.

DISCUSSION

MiLES contends that state policy is not to use the quarterly wages for petitioner's FS household as reported by the employer to the state. MiLES contends that, instead, policy requires it to find that petitioner was completely ineligible for FS during the time period in question.

First, there is no such explicit written policy. No written policy requires MiLES to find that petitioner was completely ineligible for FS.

Second, there is a written policy which states: ***Do not use IEVS in calculations for overpayments.*** (bold and italics in original) *FoodShare Wisconsin Handbook* ["FWH"] 1.2.6.1; and, "Note: IEVS may indicate that income was earned from an employer sometime during three months of the work quarter. Do not use IEVS in calculations and overpayments." (bold and CAPITALS in original) FWH 7.3.2.1.¹ Federal law requires that an overpayment be calculated by determining the correct amount a household was entitled to received (using income that then household failed to report) and then subtracting this from the amount it actually received. 7 C.F.R. §§ 273.18(c)(1)(ii)(A), (B) & (C) (2015). Policy cannot be followed if it conflicts with federal law. Although I acknowledge that the FS regulations are not always clear with regard to verification policy as it applies to establishing overpayments, I cannot conclude that this interpretation of the verification policy is consistent with federal regulations.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to establish the following 3 Claims against petitioner for alleged overpayments of FS spanning the time period July 25, 2011 to August 31, 2013 in the total amount of \$16,052.00:

- (1) Claim Number [REDACTED]; July 25, 2011 to June 30, 2012; \$7,037.00;
- (2) Claim Number [REDACTED] July 1, 2012 to June 30, 2013; \$7,679.00; and,
- (3) Claim Number [REDACTED] July 1, 2013 to August 31, 2013; \$1,336.00.

¹ "IEVS" is the Income Eligibility and Verification System.

Nothing prevents the agency from pursuing FS recovery premised upon a new Notice of Overpayment with a correct basis in law and fact for the claim.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to MILES, and that MiLES NOT establish the 3 claims detailed in *Findings of Fact* at #2, above, against petitioner for alleged overpayments of FS spanning the time period July 25, 2011 to August 31, 2013 in the total amount of \$16,052.00.

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.

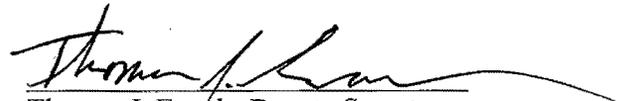
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

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, WI, 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 request (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 30 day
of April, 2015.



Thomas J. Engels, Deputy Secretary
Department of Health Services