



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/162972

PRELIMINARY RECITALS

Pursuant to a petition filed December 30, 2014, under Wis. Admin. Code, §HA 3.03, to review a decision by the Grant County Dept. of Social Services in regard to recover FoodShare benefits (FS), a hearing was held on February 19, 2015, by telephone. The hearing was rescheduled from January 22, 2015 to allow the parties the opportunity to review new evidence presented by the petitioner. The record was held open an additional eight days to allow petitioner to respond to a final calculation; no response was received.

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: Julie Friederick
Grant County Dept. of Social Services
P.O. Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Grant County.
2. In 2014 petitioner received FS for himself and his two children. Effective April 1, 2014, the household was issued \$86 in FS. Gross monthly income on which FS were based was \$1,368 from employment and unemployment compensation (UC). A notice dated March 10, 2014 informed petitioner that he should report if income rose above \$1,649.

3. Petitioner reported no income changes until October, 2014 when he reported that he was laid off.
4. In November, 2014 the county received a state wage match showing employment income to be higher than budgeted in the second quarter of 2014. Actual wages were obtained.
5. Petitioner's earned income in April, 2014 was \$1,073.74. Along with unearned income total April income was \$1,484.36.
6. Petitioner's earned income in May was \$2,606.94. Monthly household income remained above \$1,649 through September, 2014.
7. The actual calculations during that period gave petitioner a \$313.19 earned income deduction. His shelter expense was \$950 each month.
8. Using the actual income it was determined that petitioner was overpaid \$808 in FS from April through September, 2014, claim no. [REDACTED]. Petitioner was notified of the overpayment on December 12, 2014.
9. After petitioner pointed out discrepancies in the income resulting from the employer's confusing wage report, and then also after crediting petitioner with out-of-pocket child care that he paid, the worker determined that the correct overpayment was \$613 for the period April through September.

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).

I find that the overpayment occurred, but that the county worker erred by including April through June in the calculation. Petitioner's income in April was under the reporting level, and it rose above the reporting level in May, 2014. FS policy required petitioner to report the increase by June 10, 2014. See FS Handbook, App. 6.1.1.2. Thus FS would not be affected until July, 2014, and the overpayment should be only for the months of July through September. Handbook, App. 6.1.3.6.

Another error occurs in the calculation. In reviewing the January 22, 2015 recalculations, the worker gave petitioner no earned income deduction. She reads the policy wrong. The policy is that if the person fails to report an increase in income, there is no additional earned income deduction beyond the one used in the original calculation. Handbook, App. 7.3.2.1, "Client Error," seventh paragraph. Petitioner originally was given a \$313.19 earned income deduction, and that amount should have remained in the calculation. Thus the July re-calculation was incorrect.

I re-calculated July: \$2,288.72 gross income minus \$313.19 earned income minus \$152 standard minus \$388 child care equals \$1,435.53. One half of that amount is \$717.76, and thus the shelter deduction is \$950 shelter expense minus \$717.76 equals \$232.24. Net income for FS purposes thus is \$1,435.53 minus \$232.24 shelter deduction equals \$1,203.29. Petitioner was eligible for \$136 FS for July based upon that net income. Handbook, App. 8.1.2. The overpayment for July was the \$177 issued minus the \$136 correct amount equals \$41.

Adding the earned income deduction to the August and September calculations does not change the overpayments. Income in those two months was so high that even with the earned income deduction net income was over the limit, and thus the full \$177 was overpaid each month.

Based on these calculations, I conclude that petitioner was overpaid \$395 in July through September, 2014 because he failed to report increased income.

CONCLUSIONS OF LAW

1. Petitioner was overpaid FS in 2014 because he failed to report increased income.
2. The overpayment began in July, 2014 because petitioner's income rose above the reporting threshold in May, 2014.
3. The county erred in calculating the July, 2014 overpayment because it gave no earned income deductions when it should have used the earned income deduction as in the original calculations.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to amend FS overpayment claim no. [REDACTED] to be \$395 for only the months of July through September, 2014. The county shall do so within 10 days of this decision.

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 2nd day of March, 2015

\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 March 2, 2015.

Grant County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability