



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/163063

PRELIMINARY RECITALS

Pursuant to a petition filed January 05, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 03, 2015, at Marinette, Wisconsin.

The issue for determination is

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Mary Maynard

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.
2. Ms. [REDACTED] was head of a FS case with her husband as a member of the FS household.
3. Ms. [REDACTED] was sent a notice on 12/16/13 indicating that she was required to report within ten days any time her household income rose above \$1,681.

4. In September 2014 the agency began an investigation into household income due to a wage match discrepancy in household income. It had budgeted \$370.12 per month for Mr. [REDACTED] and \$970.79 for Ms. [REDACTED].
5. The agency sought income verification from [REDACTED] [REDACTED] which was Ms. [REDACTED]'s employer. She had reported separation from this employer on 7/21/14.
6. The agency obtained actual paystubs for the period from January 2014 to June 2014. The agency determined that the household income had exceeded the threshold reporting amount in January 2014 and should have been reported by February 10, 2014.
7. The agency continued to budget 370.12 for Ms. [REDACTED]'s husband.
8. Due to the income received and verified in excess of the amount budgeted for petitioner, the household was actually receiving \$199 more FS than it was entitled to for each month of March through June.
9. The agency issued a FS notice of overissuance.
10. Petitioner appealed.

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).

An FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook, App. 8.1.1.1. 130% of poverty was \$2,008 for a household of three.

The Department's case is premised upon the state wage match record which is wage information provided to the state by employers. When the state received this income information from the Ms. [REDACTED]'s employer, [REDACTED] [REDACTED], it noted that the reported wages exceeded the budgeted income for the group. The Department then requested verification which was provided in the form of paystubs or earnings reports generated by the employer.

The Department argues that the state wage match record and the information provided by the employer shows that the household income was so high as to make the family eligible for only \$15 of FS rather than the \$214 it received for each month from March 2014 to June 2014.

Petitioner repeatedly argued that they did not know that they had gone over the reporting limit. Petitioner argued that irregular hours led to the agency using anomalous checks that were much higher than the rest during the period. But this is not borne out by the evidence. The paycheck of January 24 and February 7 which were used by the agency to determine Ms. [REDACTED]'s income were \$834.83 and \$763.70 respectively. But the other subsequent paychecks provided to the agency reflect similar amounts not reflective of any unusually high amount in January and February (Feb. 21: \$773.35; March 7: \$847.40; May 30: 817.50; June 13: 767.50). Even the lowest of these, at \$767.50, when multiplied by 4.3 to reach Ms. [REDACTED]'s monthly income and added to Mr. [REDACTED]'s income of \$370.12 leads to a total household

income that should have been reported and reflects an overpayment. Petitioner continued to point to paystubs that are purportedly lower but were not provided as an exhibit. Even those checks appear to be amounts that would lead to an overpayment. Petitioner's argument evolved as the hearing progressed and then wanted to apply a reasonable and practical standard as it is a burden to monitor monthly income. Petitioner's arguments were meritless. If petitioner wishes to receive public benefits, despite reporting requirements being "tiresome and annoying," petitioner will need to comply with the rules.

CONCLUSIONS OF LAW

The Department did not err in determining the \$796 overissuance.

THEREFORE, it is ORDERED

That this appeal is 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 2nd day of March, 2015

\sJohn P. Tedesco
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 March 2, 2015.

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