



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/163093

PRELIMINARY RECITALS

Pursuant to a petition filed January 9, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 28, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid \$2,965 in FoodShare benefits in the period of December, 2013 – May, 2014, due to a client error.

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: Belinda Bridges

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was the casehead of a 3 person FS group in the period of December, 2013 – May, 2014.

2. On or about September 17, 2014, the agency received a State Wage and Income Crossmatch Alert (SWICA) that indicated that the petitioner had had \$4193 of wages in the 1st Quarter of 2014 while she had reported \$0 of earnings for January and February, 2014, via her last Six Month Report Form from October 23, 2013. See, Exhibit #1, at p. 8; and see, Exhibit #2.
3. On November 24, 2014, the agency issued a verification request to the petitioner and her employer of SWICA record, [REDACTED], requesting proof of her wages from October 1, 2013, through May 31, 2014; and requesting this verification be provided by December 4, 2014. See, Exhibit #7.
4. The requested income information was not received by the Department by December 4, 2014. See, Exhibit #1, at p. 7, Case Comments for December 11, 2014.
5. On December 11, 2014, because the Department's Milwaukee agency had not received income verification from the petitioner, it determined on its own initiative that this meant it could compute an overpayment of FS for the petitioner as if she was totally ineligible without actually knowing her income or using it. See, Exhibit #1, at p. 7, Case Comments for December 11, 2014.
6. On December 15, 2014, the Department issued a FoodShare Overpayment Notice to the petitioner informing her that it had determined that she had been overpaid \$2,965 in FS during the period of December, 2013 – May, 2014, due to her failure to provide accurate information for benefits due to a client error. In so computing, the agency used \$0 as earned income in each month of the computations and apparently ran the overpayments in some type of simulation that allowed the FS recipient to be tested as if completely ineligible even though the agency could not know if she was completely ineligible because it did not test her income and could no longer use income averaged from the SWICA as had been past practice, because the Department no longer allowed the averaging from SWICA data.
7. On January 9, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the overpayment determination of December 15, 2014, as inaccurate.
8. A hearing was set for January 28, 2015, and the petitioner appeared and provided a copy of her actual earnings from her employment at [REDACTED] during the period of December, 2013 – May, 2014. The record was held open for 10 days for the agency to provide a copy of the petitioner's income documents to the administrative law judge.
9. The agency received the income data from the petitioner on January 28, 2015, and on its own initiative remanded the case to an overpayment specialist for a review of the overpayment previously found. See, Exhibit #11.
10. On January 29, 2015, overpayment specialist "A. Hickman" issued a new FoodShare Under/Overissuance Worksheet recomputing the petitioner's FS eligibility from December, 2013, to May, 2014, by adding into the FS budgets for these 6 months the petitioner's actual income for each month as reported in the wage data the petitioner provided after the hearing. See, Exhibits #11 & #10. When the petitioner's actual earnings were added to her pre-existing FS budget computations for these 6 months, she was again found to be ineligible for every one of the six months tested due to net countable income in excess of program limits, and she was again found to have been overpaid exactly \$2,965 of FS from December, 2013 to May, 2014, for FS overissuance claim no. [REDACTED], exactly as before. See, Exhibit #10.
11. There is no indication that the agency issued a new or amended Notification of the FS Overissuance. Rather, it only amended the Worksheets because the resulting overpayment and reason were identical to the extant overpayment from December 15, 2014.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation,

an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, Milwaukee Enrollment Services has the burden of proof to establish that the action taken by MES was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

The evidence in this record demonstrates that the agency at first incorrectly determined the overpayment by merely concluding the petitioner was ineligible for all FS when she did not verify her earnings. As the agency representative was informed at the hearing, this procedure does not withstand scrutiny. It has no basis in fact or law, and I would have no problem overturning it.

Here, however, the petitioner provided the missing income verification for the entire test period at the hearing, and the agency representative forwarded it the day after the hearing to the county's recovery unit to review the overpayment. Two days after the hearing and during the open records period for receipt of the petitioner's wage information (Exhibit #11), the agency provided Exhibit #10 to the Administrative Law Judge demonstrating that it had input all of the petitioner's actual monthly income into each of the 6 months of the test period, and that as a consequence of this additional income she was in fact in excess of the program's income limits in each of the 6 months in question. Therefore, she remained completely ineligible for FS from December 1, 2013 – May 31, 2014, and consequently was overpaid exactly \$2,965 in the test period *exactly as originally notified*, albeit with different eligibility computations using her actual income.

The agency has provided a copy of the detailed Notification of FS Overissuance and the latter amended set of Worksheets demonstrating fully the computation of the overpayment for \$2,965. The petition pointed to only one error in the arithmetic used by the agency in these computations, i.e., the agency had not used her actual income. And I would have ordered the agency to do so on remand. But on its own initiative, the agency did so immediately in the wake of the hearing using the income numbers the petitioner provided after the hearing. See, Exhibit #11. I have reviewed these ultimate re-calculations of January 29, 2015, and I can find no error. Rather, when using her actual income, she was in fact ineligible in all six months due to income in excess of the net income limits for a household of 3 persons. There was an omission in Exhibit #11, the wage data, because p. 2, stubs for December 27, 2013, and January 10, 2014, were missing. I spoke post hearing with the petitioner by telephone (on today, February 19, 2015, per the agency's request) and she admits that this page (page 2) was missing because it blew out of the window of her car. She informed me that she did work between December 13, 2013 and January 10, 2014, and that her December 27th paystub would have been essentially the same as the pay of December 13, 2013; and the pay on January 10, 2014, would essentially be the same as the January 24, 2014, paystub. I reviewed the agency earned income computations and they are consistent with these admissions from the petitioner, and sufficient to sustain the accuracy of the re-computed FS overissuance for the six month period. Thus, I can find no error in the re-computation.

Based upon a level of evidence in this record far exceeding the preponderance of the evidence test, I can only conclude that the county agency correctly determined the petitioner was overpaid \$2,965 in FS from December, 2013, through May, 2014, due to a client error in failing to report earned income. The Department's original overpayment Notification, as amended with corrected Worksheets arriving at the same total overpayment, must be sustained.

CONCLUSIONS OF LAW

That the county agency correctly determined in FS overissuance Claim No. [REDACTED], as recomputed on January 29, 2015, that the petitioner was overpaid \$2,965 of FS from December 1, 2013, through May 31, 2014, due to a client error in reporting earned income.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be, and the same hereby 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 19th day of February, 2015

\sKenneth D. Duren, Assistant Administrator
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 February 19, 2015.

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