



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/164112

PRELIMINARY RECITALS

Pursuant to a petition filed February 23, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 02, 2015, at Neenah, Wisconsin.

The issue for determination is whether the agency has established an overpayment of FS against the petitioner due to agency error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jeanie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Winnebago County and has been a recipient of FS.

2. On January 27, 2015 the agency processed petitioner's six month review form (SMRF) for FS. It determined petitioner's gross monthly income to be \$4458.34. It also determined that it had made an error in calculating her income previously by failing to add back depreciation into her self-employment income for the FS issuances made between September 2014 and February 2015.
3. On February 12, 2015 the agency issued a Notice of FoodShare Overissuance to petitioner advising of an overpayment from September 2014 and February 2015 in the amount of \$3877 due to agency error.

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(a). 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); See also FS Handbook, §7.3.1.2, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> and *DHA Final Decision No. FOP/157091* (Nov. 25, 2014).

Here, the agency showed that it had originally calculated petitioner's income incorrectly by failing to add back in the depreciation to her self-employment income, causing an FS overpayment. The agency presented the calculations to show how it determined the corrected income and the overpayment. See Exhibit 6. Petitioner did not dispute the calculations, but rather explained that she was unaware of the agency's miscalculation when it issued the FS originally and argued the unfairness of now being stuck with an overpayment she did not cause herself.

The rules clearly state that overpayments can be taken even if the agency caused it. I understand that this seems unfair. However, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. In other words, I cannot disregard the law because I believe it to be unfair.

In sum, I must find that the preponderance of the credible evidence establishes that the agency correctly calculated the FS overpayment against the petitioner.

CONCLUSIONS OF LAW

The agency has met its burden to establish that it correctly calculated an overpayment of FS against the petitioner due to agency error.

THEREFORE, it is

ORDERED

The petition for review herein 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 Milwaukee,
Wisconsin, this 16th day of April, 2015

\sKelly Cochrane
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 April 16, 2015.

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