



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOP/164142

PRELIMINARY RECITALS

Pursuant to a petition filed February 21, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on April 21, 2015 with continued proceedings on May 27, 2015, at Janesville, Wisconsin.

The issue for determination is whether petitioner is liable for a FS overissuance for the months of January, February, and March 2014 in the amount of \$357.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Petitioner's Representative:

Attorney Redact

Respondent:

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

By: Atty. Redact
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Rock County.
2. Petitioner was a FS recipient in 2013 and 2014.

3. On October 4, 2013, the agency conducted a determination of petitioner's ongoing eligibility for FS and her allotment. The agency determined that petitioner's countable gross income for her group of 4 was \$2,782.71 which placed her at 139.98% of the federal poverty level.
4. On October 21, 2013, petitioner was sent a notice which stated that her FS allotment was to be \$56, and because her income exceeded 130% of the FPL she did not have to report any changes until her next review.
5. A notice was sent on October 22, 2013 which informed petitioner that her FS allotment was to be \$336, and that if her income exceeded \$1,962.50 that she must report it by the 10th day of the following month.
6. A notice was sent on November 13, 2013 which informed petitioner that her FS allotment was to be \$119, and that if her income exceeded \$2,610.13 that she must report it by the 10th day of the following month.
7. Petitioner's gross earned income was \$2,331.87 in October 2012, \$3,478.11 in November 2013, \$2,452.62 in December 2013, \$2,461.99 in January 2014, \$2,456.26 in February 2014, and \$2,463.90 in March 2014. The parties have stipulated to these amounts.
8. On February 5, 2015, the agency issued a FS overissuance notice indicating an overissuance from 11/1/13 to 3/31/14 in the amount of \$812.
9. Petitioner appealed.
10. At hearing, the agency amended the overpayment period to only January to March 2014 in the amount of \$357.

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 § 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, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

The Foodshare Wisconsin Handbook explains the reporting requirements for a recipient applicable to petitioner in this case:

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units are only required to report if their total monthly gross income exceeds 130% (8.1.1) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

If a food unit has reported total income exceeding 130% FPL for their food unit size, and the food unit remains open for FS due to categorical eligibility, the food unit has fulfilled their change reporting requirement for the remainder of the FS certification period.

Foodshare Wisconsin Handbook § 6.1.1.2 (emphasis added).

The agency argues that petitioner received a notice on November 13, 2013 which informed that if her income exceeded \$2,610.13 she was to report that change by the tenth day of the following month. The agency argues that petitioner's income exceeded this amount in November 2013 and that she should have reported the change by December 10, 2013.

Petitioner argues that after her income exceeded \$130% FPL in October she did not need to report subsequent changes. Petitioner remained "categorically eligible" after the October determination of income exceeding 130% FPL. Most FoodShare groups are considered categorically eligible if their gross income is at or below 200% FPL, or \$3,926 on the pertinent dates in this matter. See, *FoodShare Wisconsin Handbook* App. § 8.1.1 (release 13-02, effective 10/1/13).

The agency counsel conceded that the notice and the Handbook are contradictory. Counsel for petitioner argued that a reporting requirement stated on a printed notice about benefits cannot control over an express provision of the FoodShare Wisconsin Handbook. I agree. Petitioner reported her increase in income over the 130% FPL. She had no further obligation to report changes. If the Department is in disagreement then it is within its power to modify the Handbook rule to include an exception to the express statement that a person becomes. But it is not reasonable to hold a boilerplate provision in a computer-generated notice to control over a program policy in the program handbook which was presumably well-considered and revised and subject to modification through Department policy memos.

CONCLUSIONS OF LAW

That petitioner did not receive a FS overissuance in January through March 2014 because she complied with her reporting requirements.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to reverse the determination of an overissuance for January through March 2014 and to cease collection. Any recouped sums shall be returned. These actions shall be completed within 10 days.

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 18th day of June, 2015

\sJohn P. Tedesco
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 June 18, 2015.

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

Attorney [Redacted]

Attorney [Redacted]