



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Redact

DECISION

FOP/164326

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Dunn County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 25, 2015, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare that occurred because of the agency's error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact

Respondent:

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

By: [Redacted]

Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Dunn County.

2. The county agency notified the petitioner on February 11, 2015, that she must repay an \$886 overpayment of FoodShare that occurred from September 2014 through January 2015 because the agency failed to budget her income when determining her benefits.
3. The county assumed the petitioner's income from [Redact] was \$1,129.61 per month. *Exhibit 1*.
4. The petitioner's actual income from [Redact] was as follows:
  - a. September 2014: \$927.26
  - b. October 2014: \$981.19
  - c. November 2014: \$1,168.95
  - d. December 2014: \$1,013.25
  - e. January 2015: \$961.07 (*Exhibit 2*)

### DISCUSSION

State agencies must “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. The amount of a FoodShare allotment depends upon net income and the number of persons in the household. The county agency contends that the petitioner's household received \$886 more FoodShare from September 2014 through January 2015 because it failed to budget her income when determining her benefits. She disagrees with the overpayment because she reported this to the agency. The agency concedes she reported the income. Nevertheless, because the agency must recover all incorrectly paid benefits, this does not prevent its action.

Still, the agency must prove that it is entitled to recover the amount it says is due. Agencies are instructed when determining an overpayment to “[o]nly use the income and expenses reported or required to be reported for each month of the adjustment period.” *FoodShare Wisconsin Handbook*, § 7.3.2.1. The petitioner returned to work at [Redact] and reported this in July 2014, but the county agency overlooked this change until her next review on February 6, 2014. She was required to report the change in income by the 10<sup>th</sup> day of the month following her return to work, which she he did. *FoodShare Wisconsin Handbook*, § 6.1.1.2. ;7 CFR § 273.12. She would then have 10 more days to verify that income. *FoodShare Wisconsin Handbook*, § 1.2.1; 273.2(f). Changes that reduce benefits generally do not go into effect until the agency has had adequate time to process a negative notice. *FoodShare Wisconsin Handbook*, § 6.1.3.6.; 7 CFR 273.12(c)(2)(i). In the petitioner's case, the agency correctly determined that she did not have an overpayment until September 2014 because that is the month that her return to work would have affected her benefits.

But the agency also used prospective budgeting to determine her income. Thus, it determined that she earned \$1,129.61 per month during the overpayment period. In fact, she earned less than this each month. The agency apparently relies upon an interpretation of the requirement that it only use income and expenses that are required to be reported each month—it is difficult to tell because the actual interpretation is not in the *FoodShare Wisconsin Handbook*. It is a false analogy to use this section both to delay collecting an overpayment until the benefits would have changed and to use it to recover benefits paid in the month the overpayment would have occurred. What the agency is doing is using its own error to recover more benefits than she would have received if those benefits had been based upon actual income.

There is a logical basis to use actual income. When determining earned income, the agency must count “income only for the month in which it is received.” *FoodShare Wisconsin Handbook*, § 4.3.2. This is based on the simple premise that the less money a person has at any particular time, the less he can spend on food. When determining future benefits, the agency must always make an educated guess about a

recipient's income based upon his past and current circumstances. When recovering an overpayment, it generally is no longer necessary to guess at what the recipient earned—assuming the agency can gather sufficient information about his income during the alleged overpayment period. Here, the agency had that information available but did not use it.

I am going to remand this case to the agency with instructions to redetermine her overpayment based upon her actual income. That income is as follows:

a. September 2014:	\$927.26
b. October 2014:	\$981.19
c. November 2014:	\$1,168.95
d. December 2014:	\$1,013.25
e. January 2015:	\$961.07

### CONCLUSIONS OF LAW

1. The petitioner must repay an overpayment of FoodShare that occurred because of the agency's error.
2. The agency incorrectly determined the petitioner's FoodShare overpayment because it did not use her actual income to do so.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it redetermine her FoodShare overpayment using her actual income from September 2014 through January 2015. If the petitioner disagrees with the agency's determination she can file a new appeal. But she cannot file a new appeal based upon the fact that the agency's error led to the overpayment.

### **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 9th day of April, 2015

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\sMichael D. O'Brien  
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 9, 2015.

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