



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/164626

PRELIMINARY RECITALS

Pursuant to a petition filed March 09, 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 April 07, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

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: Jose Silvestre

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

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated February 2, 2015. It informed Petitioner that she had been overissued FoodShare in the amount of \$4531.00 for the period from February 1, 2014 through January 31, 2015. This is claim # [REDACTED].
3. The basis for this FoodShare overissuance claim was that Petitioner failed to report new employment during a January 2014 review. That review form was submitted on January 23, 2014 and a phone interview conducted on January 27, 2014.

4. Petitioner began employment with [REDACTED] in January 2014 and earned \$180.00 from that employer for that month with a pay date of January 31, 2014 for 20 hours of work at \$9.00 per hour. Other household income for January 2014 was \$3087 for her spouse and \$897.35 from one of the children for a total of \$3984.84.
5. Petitioner began work at [REDACTED] in February 2014 and earned \$384.00 in February 2014 from that employer along with \$1260.00 in February 2014 from [REDACTED]. Other household income from spouse and child totaled \$3997.65.
6. Petitioner’s employment changed in August 2014; she left [REDACTED] and started, in October 2014, with [REDACTED].
7. Petitioner’s household size was 7.
8. 130% of the Federal Poverty Level for a household of 7 was \$3858.00 from October 1, 2013 through September 30, 2014 and increased to \$3904 as of October 1, 2014. *See Operation Memo, 13-27, effective October 1, 2013 and 14-37, effective October 1, 2014.*
9. Petitioner’s household gross income did not fall below 130% of the applicable FPL during the time of the overissuance involved here.
10. Petitioner also submitted a six month report form in August 2014 and did not report her employment.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare 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 Code of Federal Regulations (CFR) § 273.18(b), see also FoodShare Wisconsin Handbook (FSH), §7.3.2.*

Also applicable here are the following provisions from the *FoodShare Eligibility Handbook (FSH)*:

...

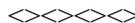
Client Error

Establish a claim for a client error that occurred when the FS group unintentionally:

1. Failed to provide correct or complete information.
2. Failed to report a change that was required to be reported.
3. Received FS for which it was not entitled pending a fair hearing decision.

...

FSH, §7.3.2.1.



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.

...

FSH, §6.1.1.2.

Petitioner’s household gross income exceeded the 130% reporting threshold at all times relevant here and Petitioner failed to report her employment. Petitioner’s only argument here is that she thought that she had until February 2014 to report the new employment and income and that the overpayment, should, therefore, start in March 2014.

A review is essentially a new application and requires that a person demonstrate eligibility for benefits. Petitioner must have known by the time of the January 27, 2014 interview that she was starting work, she was paid \$180.00 4 days later for 20 hours of work. She failed to report it. She also failed to report the employment of a six month report form as required. *FSH §6.1.2.*

I conclude that Petitioner was overissued FoodShare from February 1, 2014 through January 31, 2015 and the agency may proceed to collect that overissuance.

I do note for Petitioner's benefit the following *FSH* provision as to repayment of an overissuance:

7.3.2.12 Repayments

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

FSH, §7.3.2.12.

CONCLUSIONS OF LAW

That Petitioner did not report employment as required and was overissued FoodShare beginning February 1, 2014 through January 31, 2015 and the agency may proceed to collect that 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 Milwaukee,
Wisconsin, this 7th day of May, 2015

\sDavid D. Fleming
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 May 7, 2015.

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