



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOP/164630

PRELIMINARY RECITALS

Pursuant to a petition filed March 13, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Trempealeau County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on May 6, 2015, by telephone. A hearing set for April 16, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner was overpaid FS.

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact
Trempealeau County Dept. of Soc. Services
P.O. Box 67
Whitehall, WI 54773-0067

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Trempealeau County.
2. Petitioner receives FS in a household with his wife and two grandchildren. On September 2, 2014 the county agency sent petitioner a notice informing him that the household had been overpaid \$1,224 in FS from June 20 until August 31, 2014, claim no. Redact. The reason for the overpayment was agency error because the worker erroneously entered petitioner's monthly

social security income as \$1 instead of \$1,170. The notice informed petitioner that if he disagreed with the determination he could appeal by December 1, 2014.

3. Petitioner did not appeal, and the agency initially reduced petitioner's monthly FS allotment to recover the overpayment. Petitioner's FS ended in early 2015, and petitioner filed this appeal on March 13, 2015.

### 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(c). 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); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

Petitioner filed this appeal not to contest the overpayment, but to ask if payments can be lowered. That is not an issue that this office handles. If petitioner cannot afford the monthly payments, he should contact the Public Assistance Collection Unit. Contact information is on the repayment agreement that petitioner would have received after the overpayment notice.

Petitioner also mentioned that part of the reason why FS ended was that his brother-in-law was added to his case. Even if his brother-in-law lives with petitioner, if they do not purchase and prepare meals together they can be considered separately for FS purposes. From petitioner's statements at the hearing I think that it is possible that his brother-in-law does not share meals with the household. Petitioner can reapply for FS; he should be sure to report that his brother-in-law lives in the household, but that they do not purchase and prepare meals together. I acknowledge that he still might not be eligible since his household size is smaller as well.

### CONCLUSIONS OF LAW

The county correctly determined an FS overpayment; the Division of Hearings and Appeals does not have jurisdiction over repayment arrangements, however.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 8th day of May, 2015

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\sBrian C. Schneider  
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 8, 2015.

Trempealeau County Department of Soc Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability