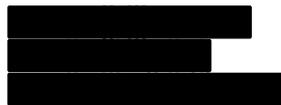




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/164709

PRELIMINARY RECITALS

Pursuant to a petition filed March 18, 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 7, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that the Petitioner was overpaid Foodshare benefits from February 2014 through January 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Kristine Kostroski, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On November 3, 2013, the Petitioner completed an on-line Six Month Report Form (SMRF) in which she reported working two hours per week at \$9.00 per hour and that her husband worked

- 40 hours per week at \$15.25 per hour. The Petitioner also indicated that she received child support income for one child, ER in the amount of \$87.00 per month. The Petitioner electronically signed the SMRF indicating the information was correctly and complete to the best of her knowledge. (Exhibit 7)
3. On November 21, 2013, the Petitioner provided verification of her employment, via letter from her assistant sales manager. (Exhibit 9)
 4. Also on November 21, 2013, the Petitioner provided the agency with her husband's paystubs for October 17, 2013, October 24, 2013, October 31, 2013 and November 7, 2013. The paystubs showed that the husband earned regular pay, vacation pay, overtime pay, holiday pay, profit sharing income, sick pay and something called "Time Results", although during the pay periods covered by those paystubs, the Petitioner's husband earned income in the categories of Regular pay, vacation pay, sick pay, and overtime. (Exhibit 10)
 5. On April 24 and 25, 2014 the agency took action to add Petitioner's newborn child to her case. (Exhibit 4)
 6. On May 20, 2014, the Petitioner completed a renewal over the telephone and the agency sent her an application summary, in which the Petitioner added her newborn son, increasing the household size to six. The Petitioner reported working four hours per week at \$9.00 an hour and that her husband worked 39.98 hours per week at \$15.25 an hour. The Petitioner also reported receiving child support in the amount of \$176.85 per month for one child and \$87.00 per month for a second child. The Petitioner electronically signed the application summary, indicating the information was correct and complete to the best of her knowledge. (Exhibit 12)
 7. On May 24, 2013, the Petitioner provided income verification in the form of an e-mail from the portrait manager. (Exhibit 13)
 8. On that same date the Petitioner provided an Employment Verification of Earnings Form for from her husband's employer indicating that he typically works 40 hours per week at \$15.25 per hour. (Exhibit 14)
 9. On May 29, 2014, the Petitioner submitted her husband's pay stubs for April 24, 2014, May 1, 2014, May 8, 2014, May 15, 2014 and May 22, 2014. (Exhibit 15)
 10. On November 5, 2014, the Petitioner completed an on-line SMRF, in which she again reported her employment and her husband's employment though she indicated that there would be a change effective December 2014. The Petitioner again reported receiving child support for ER in the amount of \$87.00 per month and she reported receiving child support for a second child in the amount of \$235.00 per month. The Petitioner signed the SMRF indicating that the information was correct and complete to the best of her knowledge. (Exhibit 18)
 11. On February 3, 2015, the agency sent the Petitioner a FoodShare Overpayment Notice, claim [REDACTED], indicating that she was overpaid FoodShare benefits in the amount of \$3,205.00 for the period of February 1, 2014 to January 31, 2015. (Exhibit 28)
 12. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 18, 2015. (Exhibit 1)
 13. Petitioner's household consisted of five people, until April 2014, when her youngest son was born and increased the household size to six. (Exhibits 4, 11, 12 and 29)
 14. Petitioner's household does not include an elderly or disabled individual. (Exhibits 7, 12 and 18)

DISCUSSION

Federal law generally requires that all FoodShare overpayments be recovered, regardless of whether the recipient or the county is at fault. Those regulations provide, in relevant part, as follows:

- a) **Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH) § 7.3.1.1.

In an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. The Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

The Petitioner does not dispute the fact that she was overpaid benefits from September 2014 through January 2015 because she did not report an increase in her income as required. However, the Petitioner disputes the determination that an overpayment occurred from February 2013 through August 2014 and asserts that if an overpayment did occur during that period of time, the overpayment was due to agency error.

The agency contends that the Petitioner caused an overpayment of benefits beginning in February 2014, because her income exceeded the 130% FPL income reporting threshold in December 2013, but she failed to report the change in income as required.

Counsel argued that Petitioner accurately reported her income at the time of her November 2013 SMRF, which already exceeded the 130% FPL threshold, so she was not obligated to report any other changes in income until her renewal in May 2014.

I. The 130% FPL Reporting Requirement

As there is no evidence to indicate that Petitioner's household included an elderly, blind or disabled (EBD) member, the FoodShare Wisconsin Handbook (FSH) states that the Petitioner was subject to reduced reporting requirements and only needed to report a change in income that pushed the household income over 130% of the Federal Poverty Limit (FPL):

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

All other food units [i.e., household's which do not have an EBD member] 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.

...

Emphasis added; FSH §6.1.1.2; See also 7 CFR §273.12(a)(vii)

The above makes apparent that, if Petitioner report income exceeding 130% FPL at the time of her November 2013 SMRF, she did not need to report any changes in income until her May 2014 renewal.

Between October 1, 2013 and September 30, 2014, the 130% reporting threshold for a household of five people was \$2,987.00 per month and for a household of six people it was \$3423.00. *FoodShare Wisconsin Handbook (FSH) § 8.1.1 – Release 13-02*

As of October 1, 2014, 130% of FPL for a household of six people was \$3464. *FoodShare Wisconsin Handbook (FSH) § 8.1.1.*

It should be noted that when calculating an overpayment only income that was required to be reported should be used:

7.3.2.1 Client and Non-client Error

Consider the [FS](#) group's reporting requirements when calculating the overissuance. *Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported.*

...

Emphasis added; FSH, §7.3.2.1

This provision of the FSH reiterates this:

...

When determining if an overissuance occurred due to an unreported increase in total gross monthly income, compare the total actual unconverted income amount to the income reporting limit for the household size to determine if the income should have been reported. Enter the converted income amount to determine ongoing benefit eligibility. Use the income and expenses reported or required to be reported for each month of the adjustment period. *In claim calculations, disregard income that was not previously reported and was not required to be reported.*

Emphasis added; FSH, §7.3.2.1

II. *Petitioner's Income at the time of the November 2013 SMRF*

Looking at the notices that were sent to Petitioner on November 11, 2013 and November 25, 2013, it appears the agency calculated the Petitioner's income to be \$2,967.40 and \$2,865.33 respectively, but it is not clear from the record how the agency calculated the Petitioner's income at that time.

In her November 2013 SMRF, the Petitioner reported and verified income from her job in a portrait studio to be in the amount of 2 hours per week at \$9.00 an hour. This works out as follows:

2 hours per week x \$9.00 an hour = \$18.00 average weekly income
 \$18.00 x 4.3 average weeks per month = \$77.40 average monthly earned income.

At the time of the November 2013 SMRF, the Petitioner provided her husband's paystubs for October 17, 2013, October 24, 2013, October 31, 2013 and November 7, 2013, which showed the husband was paid for 40 hours per week, at his regular rate of \$15.25 per hour and that he had one week where he worked 10 hours of overtime at \$22.875 per hour.¹ Petitioner's husband's earned income works out as follows:

40 hours per week x \$15.25 = \$610 average weekly income at regular pay
 \$610 x 4.3 average weeks per month = \$2623 average monthly income at regular pay

¹ It should be noted that the November 7, 2013 check showed a year to date total for overtime pay of \$663.37, along with year to date totals for holiday pay, profit sharing, sick time and "Time Results". Because the information was in the paystubs that the Petitioner provided at the time of the November 2013 SMRF, the agency cannot claim that the Petitioner failed to report her husband's additional earned income.

$10 \text{ hours} \times \$22.875 = \$228.75$ total overtime pay for four weeks
 $\$228.75 \div 4 \text{ weeks} = \57.187 average overtime per week
 $\$57.1875 \times 4.3 \text{ average weeks per month} = \245.91 average monthly overtime.

$\$2623 + \$245.91 = \$2868.91$

In her November 2013 SMRF, the Petitioner also reported receiving child support income in the amount of \$87.00 per month.

Consequently, at the time of the November 2013 SMRF, Petitioner's reported household income totaled:

$\$77.40 + \$2868.91 + \$87.00 = \3033.31

So, the agency should have already been aware that the household income exceeded the \$2,987.00, 130% FPL reporting threshold, based upon what the Petitioner reported in November 2013. As such, the agency's claim that the overpayment period should begin in February 2014 because Petitioner did not report that her household income exceeded 130% of FPL in December 2013 is without merit. Petitioner already reported income in excess of 130% of FPL in November 2013, so she was not required to report any other changes in income until her May 2014 renewal.²

III. Petitioner's Income at the time of the May 2014 renewal

In her May 2014 renewal, the Petitioner again reported and verified income from her job in a portrait studio to be in the amount of 2 hours per week at \$9.00 an hour. This works out as follows:

$2 \text{ hours per week} \times \$9.00 \text{ an hour} = \$18.00$ average weekly income
 $\$18.00 \times 4.3 \text{ average weeks per month} = \77.40 average monthly earned income.

The Petitioner reported that her husband worked 39.98 hours per week at a rate of \$15.25 per hour. However, she provided an EVFE that indicated the husband typically works 40 hours per week at \$15.25 per hour. The Petitioner also provided her husband's pay stubs for April 24, 2014, May 1, 2014, May 8, 2014 and May 15, 2014.³

Four of the five pay stubs showed the husband being paid for 40 hours of work at \$15.72 an hour; the May 1st check, for the pay period running from April 20, 2014 through April 26, 2014, showed 10 hours of work at \$15.72 an hour. According to the Petitioner, this was because her husband took time off when she gave birth to their youngest son.

Calculating the husband's income we have:

$40 \text{ hours} \times \$15.72 \text{ per hour} = \$628.80 \times 4 \text{ weeks} = \2515.20

² Now, it may very well be that an overpayment of benefits occurred, because the agency failed to correctly budget the Petitioner's income at the time of her November 2013 SMRF, but there is insufficient information in the record for me to make that determination. I leave it to the agency's discretion to decide whether the matter requires further investigation.

³ The year to date totals also showed income earned from overtime. Holiday pay, profit sharing, something referred to as "retroactive" and "time results". So the agency was made aware that Petitioner's husband did earn other income from his job. Again, the agency cannot claim the Petitioner failed to report this other income, when it was in the paystubs she provided to the agency at the time of the May 2014 renewal.

$10 \text{ hours} \times \$15.72 \text{ per hour} = \157.20
 $\$157.20 + \$2515.20 = \$2672.40 \text{ total income over five weeks}$
 $\$2672.40 \div 5 \text{ weeks} = \$534.48 \text{ average weekly income}$
 $\$534.48 \times 4.3 = \2298.26

The Petitioner also reported an increase in child support income, indicating she received \$176.85 per month for one child and \$87.00 per month for the second child, for a total of \$263.85 per month.

Thus, Petitioner's total reported monthly income was:

$\$77.40 + \$2298.26 + \$263.85 = \2639.51

According to the overpayment worksheet, the agency calculated the Petitioner's income to be \$2,970.36 in April 2014 and \$2,759.50 in May 2014. The discrepancy between the calculations may be due to the fact that my calculations are based upon prospective budgeting rules, using a prorated 4.3 week month while the agency appears to have based its calculation upon actual income without prorating.

In any event, Petitioner's income at the time of the May 2014 renewal was below the 130% FPL income reporting threshold of \$3423.00 for a household that now consisted of six people. Consequently, if the Petitioner's household income went over the \$3423 threshold before her renewal in November 2014, she needed to report it by the 10th day of the following month.

Looking at the agency's overpayment worksheets, Petitioner's income did not go over the \$3423 reporting threshold until July 2014, which means she didn't need to report the change until August 10, 2014, which would in turn affect September 2014 benefits. As such, the Petitioner and her attorney are correct, that the overpayment period should not have begun until September 2014.

CONCLUSIONS OF LAW

The Petitioner was overpaid FoodShare benefits for the period of September 2014 through January 2015 due to client error.

THEREFORE, it is

ORDERED

That claim [REDACTED] be amended to rescind the overpayment for the period of February 1, 2014 through August 31, 2014 and to reflect an overpayment for the period of September 1, 2014 through January 31, 2015 only. The agency shall take all administrative steps to complete these tasks within ten days of this decision.

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 13th day of April, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 13, 2015.

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

