



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted]
[Redacted]
Redact

DECISION

FOP/165198

PRELIMINARY RECITALS

Pursuant to a petition filed April 7, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock County Department of Social Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on June 9, 2015. At petitioner's request a Hearing schedule for May 14, 2015 was rescheduled.

The issue for determination is whether it was correct to establish the following 2 Claims against petitioner for overpayments of FS covering the time period June 2014 to November 2014 in the total amount of \$2,326.00:

Claim Number [Redacted]; June 2014 and July 2014; \$766.00; and,
Claim Number [Redacted]; August 2014 through November 2014; \$1,560.00.<sup>1</sup>

There appeared at that time via telephone 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: [Redacted], ESS
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

<sup>1</sup> Claim Number [Redacted] has the same underlying cause as Claim Number [Redacted]. Petitioner agreed that the June 9, 2015 Hearing could be for both Claims.

ADMINISTRATIVE LAW JUDGE:  
 Sean P. Maloney  
 Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [Redact]; 59 years old) is a resident of Rock County, Wisconsin.
2. The County established following 2 Claims against petitioner for overpayments of FS covering the time period June 2014 to November 2014 in the total amount of \$2,326.00:  
 Claim Number [Redact]; June 2014 and July 2014; \$766.00; and,  
 Claim Number [Redact]; August 2014 through November 2014; \$1,560.00.
3. Petitioner was a member of her adult son's (24 years old) FS household during the time periods of the FS overpayments detailed in *Finding of Fact* #2, above.
4. The FS overpayments in *Finding of Fact* #2, above, resulted from the fact that the earned income of petitioner's son from his employment at *Premier Employee Solutions* was not budgeted when calculating FS during the time period in question.

### DISCUSSION

The FS program has eligibility criteria based on both gross and net<sup>2</sup> incomes. see, 7 C.F.R. § 273.9(a) (2015); *FoodShare Wisconsin Handbook* ["FWH"] 1.1.4 & 4.3.1. For purposes of FS eligibility the income of all members of an FS household is counted.<sup>3</sup> 7 C.F.R. §§ 273.9(a)intro. & (b)intro. (2015); FWH 4.3.1.

Petitioner does not deny that her son's earned income from *Premier Employee Solutions* was not budgeted when calculating her FS during the time period in question (the evidence is that her son did not report this income to the County). Petitioner does not deny that the earned income existed and that, for whatever reason, it was not budgeted. This resulted in an overpayment.

Petitioner testified that she has 2 little grandchildren to care for and that she has been struggling to make ends meet. Unfortunately for petitioner, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2015); See also, FWH 7.3.1.1 & 7.3.2.1. . Furthermore, the law also provides that each person who was an adult member of the FS household when an overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i) (2015); See also, FWH 7.3.1.2. Thus, petitioner can be held liable for the overpayments and made to repay them.

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<sup>2</sup> Certain specified deductions from gross income are allowed when calculating net income for FS purposes. The only allowed deductions are: standard deduction; earned income deduction; excess medical deduction; dependent care deduction; child support deduction; homeless shelter deduction; excess shelter deduction; and, standard utility allowance. No other deductions are allowed. 7 C.F.R. § 273.9(d) (2015); FWH 4.6.1., et. seq.; See also, FWH 8.1.1.2.

<sup>3</sup> When income is received weekly (or every other week) it is multiplied by 4.3 (or 2.15) to get monthly income. 7 C.F.R. § 273.10(c)(2)(i) (2015). This is because there are, on average, 4.3 weeks in a month (52 weeks per year divided by 12 months per year).

**CONCLUSIONS OF LAW**

For the reasons discussed above, petitioner is liable for the FS overpayments detailed in *Finding of Fact* #2, above, and must repay them.

**NOW, 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 16th day of June, 2015

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\sSean P. Maloney  
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 16, 2015.

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