



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[Redacted]
Redact
[Redacted]

DECISION

FOP/165212

PRELIMINARY RECITALS

Pursuant to a petition filed April 7, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on May 19, 2015. At petitioner's request a Hearing scheduled for April 28, 2015 was rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following 3 closely related matters: MOP-165214; FOP-165216; and, MOP-165217.

The issue for determination is whether it was correct to establish the following 3 Claims against petitioner for overpayments of FS for the time period June 1, 2011 to December 31, 2013 in the total amount of \$6,994.00:

- (I) Claim Number [Redacted]; June 1, 2011 to May 31, 2012; \$3,189.00;
(II) Claim Number [Redacted]; June 1, 2012 to April 30, 2013; \$3,191.00; and,
(III) Claim Number [Redacted]; November 1, 2013 to December 31, 2013; \$614.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact
[Redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
BY: [Redacted], HSPC
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

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

### FINDINGS OF FACT

1. Petitioner (CARES # [Redact]) is a resident of Milwaukee County, Wisconsin.
2. MiLES established the following 3 Claims against petitioner for overpayments of FS for the time period June 1, 2011 to December 31, 2013 in the total amount of \$6,994.00:
  - (I) Claim Number [Redact]; June 1, 2011 to May 31, 2012; \$3,189.00;
  - (II) Claim Number [Redact]; June 1, 2012 to April 30, 2013; \$3,191.00; and,
  - (III) Claim Number [Redact]; November 1, 2013 to December 31, 2013; \$614.00.
3. Petitioner's household had earned income which was not reported and thus was not budgeted by the County when calculating petitioner's FS eligibility.
4. The FS overpayments in *Findings of Fact* #2, above, resulted from the fact that the entire income of petitioner's household was not budgeted when calculating FS during the time period in question (due to income not being reported).

### DISCUSSION

All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2015); See also, *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.1 & 7.3.2.1. Therefore, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault.

Petitioner does not deny that her entire household income was not budgeted when calculating FS during the time period in question and that this resulted in the overpayments. She argues that she should not have to repay the overpayments because in February 2012 she reported her household income (although she states she is not sure of the exact date). First, there is no record that petitioner ever reported income in February 2012. Second, the failure to report income involves many months other than February 2012. Third, even if petitioner did report it is still the case that petitioner's entire household income was not budgeted by the County when calculating petitioner's FS eligibility. This resulted in the overpayments. As noted above, all FS overpayments, regardless of fault, must be collected. Therefore, petitioner may be made to repay the above overpayments (even if, as she claims, they were not her fault).

Finally, petitioner also argued that the overpayments were not calculated correctly because there is a required 30-day time period between when an increase in income is reported and the time it can be counted for FS budgeting purposes. This is not correct. Changes that cause a decrease in the FS benefit will generally be effective the first of the month following the report month as long as adequate notice can be given. FWH 6.1.3.6.; See also, 7 C.F.R. § 273.12(c)(2) (2015).

**CONCLUSIONS OF LAW**

For the reasons discussed above, petitioner is liable for the FS overpayments detailed in *Findings 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 27th day of May, 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 May 27, 2015.

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