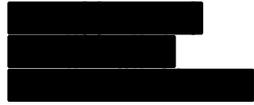




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/165369

PRELIMINARY RECITALS

Pursuant to a petition filed April 14, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on May 07, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$3,912 from the Petitioner for the period of December 20, 2013 – November 30, 2014 and \$82 for the month of December, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Kenosha County.
2. On April 11, 2013, the agency received an employer verification from Petitioner's employer  reporting that her last date of employment was March 1, 2013.

3. On May 6, 2013, the Petitioner reported to the agency that she is no longer working.
4. In June, 2013, the Petitioner returned to work at [REDACTED]. She did not report the return to work to the agency.
5. On November 19, 2013, May 22, 2014 and December 30, 2014, the Petitioner completed renewals and annual reviews and reported the only household income was from SSI and child support.
6. On December 30, 2014, the agency noted SWICA discrepancies with employer wages being reported for the Petitioner from 2012 to the present.
7. On January 5, 2015, the agency received an Earnings Verification from [REDACTED]. It reported actual gross wages paid to the Petitioner as follows:

December, 2013	\$1,272.00	June, 2014	\$ 655.95
January, 2014	\$1,193.25	July, 2014	\$1,138.35
February, 2014	\$1,024.65	August, 2014	\$ 849.15
March, 2014	\$ 976.65	September, 2014	\$ 722.25
April, 2014	\$ 672.60	October, 2014	\$1,134.90
May, 2014	\$1,058.40	November, 2014	\$ 701.71
		December, 2014	\$ 640.41
8. On February 4, 2014, the agency issued FS Overpayment Notices and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$3,912 for the period of December 1, 2013 – November 30, 2014 and \$82 for December, 2014 due to failure to report earned income.
9. On April 14, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS 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 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. Id.

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

In this case, the Petitioner did not dispute that she did not report her return to work at [REDACTED]. She testified that she believed the agency somehow knew that she had returned to work and was counting her income in FS determinations. The Petitioner’s testimony is not credible in that she was asked at several renewals and reviews about household income yet she did not report her earned income from [REDACTED]. In addition, the agency issued several notices to the Petitioner informing her of the

income that the agency was using in making its determination and informing her that any changes in income must be reported to the agency within 10 days.

I reviewed the agency's overpayment worksheets. The amount of the recovery is calculated as the difference between the amount of FS benefits that were issued to the Petitioner and the amount to which she was entitled based on her household income including the earned income from [REDACTED]. I conclude that the agency properly calculated the overpayment.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$3,912 for the period of December, 2013 – November, 2014 and \$82 for the month of December, 2014.

THEREFORE, it is ORDERED

That the Petitioner's 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 3rd day of June, 2015

\sDebra Bursinger
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 3, 2015.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability