



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case name

DECISION

FOP/165399

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on April 29, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined an FS overpayment caused by agency error.

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name

Respondent:

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

By: Redacted signature
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Milwaukee County.
2. Petitioner received FS for a two-person household in 2013 and 2014. In September, 2013, she completed a review, reporting her employment at a job in which tip income was included. The worker entered the hourly income into petitioner's FS budget but failed to include the income from tips.

3. Petitioner was issued \$193 per month FS from November, 2013 through March 31, 2014. During a March, 2014 review, the new worker caught the error with the tip income. FS were issued for April, 2014 and beyond by including the tip income.
4. On February 25, 2015, the agency informed petitioner that she was overpaid \$965 in FS from November 1, 2013 through March 31, 2014 due to agency error, claim no. Redact. The overpayment was for all FS issued during those months.
5. Petitioner was categorically eligible for FS in all months except December, 2013.

### 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).

The record shows that petitioner was overpaid FS due to agency error. Petitioner argued that she should not be responsible for the worker's error, but federal FS law requires agency error overpayments to be recovered as well as client errors.

The overpayment amount was slightly off, however. See "OP Notices and Budget Screens" tab for the FS overpayment calculations. Petitioner's household was categorically eligible for FS in all months except December, 2013. A household is categorically eligible for FS if gross income is less than 200% of the federal poverty level (FPL). FS Handbook, App. 4.2.1.1. 200% of the FPL in late 2013 was \$2,586. Handbook, App. 8.1.1, 10/29/13 release date. A categorically eligible FS household is always eligible for at least the minimum FS allotment, which at that time was \$15. Handbook, App. 7.1.1.4.

In December, 2013, petitioner's gross income was \$2,640, but in the other four months it was under \$2,500. Thus in the months of November, 2013, and January through March, 2014, petitioner would have received \$15 each month, meaning that the overpayments in those months were \$178, not \$193. The total overpayment thus is reduced by \$60, to \$905.

I note that in the calculations petitioner was not given credit for the full earned income deduction even though the error was not caused by her failure to report income. See Handbook, App. 7.3.2.1 on calculating client error overpayments. However, I did the math, and even if petitioner had been given the correct earned income deductions, she still would have been eligible for only \$15 per month FS when the tip income was added to the calculations.

### CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid FS due to agency error, but slightly miscalculated the amount because it failed to account for petitioner's categorical FS eligibility in four of the five months in question.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to amend overpayment claim no. Redact from \$965 to \$905 to account for petitioner's eligibility for \$15 per month categorically eligible FS amounts in four of the five overpayment months. The agency shall do so within 10 days of this decision. In all other respects the petition for review 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 4th 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 4, 2015.

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