



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted name and information

DECISION

FOP/165503

PRELIMINARY RECITALS

Pursuant to a petition filed April 16, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on May 13, 2015, at Janesville, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner name and information

Respondent:

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

By: Redacted name
Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Rock County.

2. Petitioner has an open and ongoing FS case. Petitioner's 2013 employment was verified; an agency worker entered the hourly income into petitioner's FS budget, but failed to include the income from tips.
3. The agency error was discovered in 2014, and on July 22, 2014, the matter was referred for an overpayment determination.
4. On April 1, 2015, the agency informed petitioner that she was overpaid \$2,969.00 in FS from September 5, 2013 through February 28, 2014, claim no. Redact. Exhibit 7.

DISCUSSION

The Department is required to recover all FS overpayments. This differs from BadgerCare Plus overpayments, which are only recoverable when they result from client error. 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 petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant her relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she is liable for the overpayment; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid FS due to agency error.

THEREFORE, it is

ORDERED

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 9th day of June, 2015.

\sPeter McCombs
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 9, 2015.

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