



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOP/165694

PRELIMINARY RECITALS

Pursuant to a petition filed April 28, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the La Crosse County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on May 14, 2015, by telephone.

The record was held open to allow petitioner to present additional information about his income, which he provided and I marked as Exhibit 15. Based upon petitioner's submission, I requested in a letter dated May 29, 2015 that Mr. Redact send me additional information about his record of petitioner's income, with the opportunity for petitioner to respond. Mr. Redact provided the information in a letter dated June 3, 2015, now marked as Exhibit 16. Petitioner did not respond to the new submission.

The issue for determination is whether the county correctly determined FS overpayments.

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact Redact
La Crosse County Dept. of Human Services
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of La Crosse County.

2. In 2013 and 2014 petitioner received FS as part of a four-person household with his girlfriend M.K. and their two children.
3. On June 26, 2013, the county notified petitioner about the amount of his FS allotment and that he needed to report to the county if monthly household income rose above \$2,498. Exhibit 2.
4. In August, 2013, M.K. started work at [Redact], but petitioner did not report the job. Household income rose above \$2,498 in September, 2013. The [Redact] job was discovered by the county in June, 2014 when a state wage match appeared. On June 9, 2014 the county requested verification of the [Redact] job. On June 23 M.K. reported that she was off work at [Redact] since April 27, 2014 but would be returning in July.
5. On July 7, 2014, the county sent petitioner a notice telling him that FS would continue at \$145 per month based only upon petitioner's \$2,681 gross income at [Redact]. The notice told him that he needed to report an increase in income if monthly household income rose to \$2,643. Exhibit 5.
6. On July 18, 2014 the county sent another notice telling petitioner that he did not need to report a change in income until his next review because household income already exceeded 130% of the Federal Poverty Level (FPL). Exhibit 14, page 13.
7. M.K. went back to work at [Redact] in July, 2014. In December the county discovered M.K. was working again through a wage match, and petitioner responded to the county's inquiry by reporting that she last worked on December 4, 2014.
8. Petitioner's income at [Redact] also fluctuated. The county budgeted \$1,892 monthly for petitioner from December, 2013 through June, 2014. During the period petitioner sometimes earned less than that amount but he also received unemployment compensation (UC) that was not budgeted. Beginning in April, 2014 petitioner earned \$2,576 per month from [Redact].
9. The county did two overpayment claims. For the period November 1, 2013 through June 30, 2014, the county determined that the household was overpaid \$1,812 in FS, claim no. [Redact]. The sole reason for the overpayment was the failure to budget M.K.'s income. The overpayment was determined by taking the income originally budgeted from petitioner's job, adding M.K.'s income, and determining the difference in FS that would have been received.
10. For the period September 1 through December 31, 2014 the county determined that petitioner was overpaid \$418 in FS, claim no. [Redact]. The primary reason was the failure to budget M.K.'s income.
11. The county informed petitioner of the overpayments by notices dated April 15, 2015.
12. After the hearing the agency revised overpayment claim no. [Redact] by taking petitioner's actual income for all months in question. The result was that the overpayments in the earlier months (December, 2013 and January, 2015) were lower, but in the later months the overpayments were higher, leading to a new overpayment claim of \$2,474. Exhibit 16, page 7.

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).

First I will deal with the earlier, larger overpayment, claim no. [Redact]. I can find no evidence whatsoever that petitioner or M.K. reported her employment at [Redact] when she started in August, 2013. Even in petitioner's first written response, Exhibit 14, he acknowledges that the first time the [Redact] employment came up was in June, 2014, after the county discovered the employment in a state wage match.

Petitioner's major issue was that the county did not do a six-month review in November, 2013. That is true. Apparently the case closed briefly due to a mix-up with petitioner's work income and UC, and when the case reopened the six-month report was not triggered. The lack of a six-month report does not excuse petitioner from his duty to report increased income, however. He should have reported the job in October, after household income rose above the reporting threshold in September. The simple fact is that petitioner never reported the [Redact] job. It was only after the county sent verification about it following the wage match discovery that M.K. responded about the job (when she reported last working in April, 2014).

Petitioner also complains that M.K.'s earned income budgeted for the overpayment was higher than actual income. That is explained by the budgeting process. When a person is paid weekly, weekly income is multiplied by 4.3 to determine monthly income for FS purposes. When a person is paid bi-weekly, bi-weekly income is multiplied by 2.15 to determine monthly income. The reason is that there are more than four weeks in most months. As a result there are some months in which a person receives extra paychecks. If a person is paid bi-weekly, she is paid three times in a month twice per year. FS budgeting basically takes that third paycheck and averages it out over six months. That way there are not two months every year in which benefits end completely because income is higher due to an extra paycheck. Thus in the calculation budgeted income is slightly higher than actual income in most months. In January, 2014 budgeted income is substantially lower than actual income because January, 2014 was a three paycheck month for M.K.

Petitioner also complained about the budgeting of UC. The UC figures are actual figures taken from the state UC records. Mr. [Redact] sent me copies of the UC records, and they match the figures provided.

An issue raised by petitioner at the hearing, and then in his post-hearing submission, is how petitioner's income was budgeted in the overpayment calculation. Petitioner noted that Mr. [Redact] budgeted \$1,263 in work income for petitioner in December, 2013, and \$1,818 in January, 2014. See Exhibit 6, page 2. Petitioner's complaint raised an issue he probably did not mean to raise because it results in a recalculation to petitioner's detriment. As it turns out, Mr. [Redact] did not use the \$1,263 and \$1,818 figures in the original calculation.

In the original overpayment determination Mr. [Redact] used \$1,892 as petitioner's income for all months, and added M.K.'s [Redact] income to determine the overpayment. Looking closely at the overpayment worksheets (found in Exhibit 7, pp. 5-8, and titled "FoodShare Should Be Nov 2013-Jan 2014," etc.), I find that for November through January the overpayment was calculated by taking \$1,892 income originally budgeted, adding in \$853.46 unreported income (M.K.'s [Redact] income for December) for a total of \$2,745.46, with a determination that the household would have been entitled to \$25 FS each month. Exhibit 6, page 1. For February through April the budget shows \$1,892 plus \$568.43 unreported income (M.K.'s [Redact] income from April) for a total of \$2,460.43, with a determination that the household would have been entitled to \$153 FS each month. Id. The same was done for May and June, with M.K.'s [Redact] income added to \$1,892 and a finding that the household would have received \$247 and \$312 FS each month. Id.

The result was that the original overpayment calculation used much less income than the household actually received. It used none of petitioner's UC income. It used less of M.K.'s **Redact** income than she received. Finally, it used far less of petitioner's income than he actually received (in March through June he averaged \$2,576 per month from his job). The result is that the original overpayment calculation had a lower overpayment than if the actual income was used.

Using all actual income, Mr. **Redact** determined that the overpayment should have been \$2,474, with lower amounts in December and January but much higher amounts in the later months. Exhibit 16, page 7. (I note here that petitioner's quarterly income in January through March, 2014 was \$5,075.06. Subtracting his January income of \$690.67, as evidenced by the pay stubs he sent in, means that in February and March he earned \$4,384.39, which averages \$2,192.20. That is the amount Mr. **Redact** used for those two months in the recalculation at Exhibit 16, page 7).

I conclude that the original calculation of claim no. **Redact** was incorrect because it failed to account for substantial household income. The recalculation is correct. The claim should be for \$2,474.

Finally I will address the second, smaller claim, no. **Redact**, for the period September 1 through December 31, 2014 in the amount of \$418. When M.K. returned to work at **Redact** in 2014 after reporting being laid off, petitioner again did not report the change. However, in this instance the overpayment cannot stand. The Notice of Decision mentioned in Finding of Fact no. 6, dated July 18, 2014, informed petitioner that he did not have to report an increase in income until his next review. See the FS Handbook, Appendix 6.1.1.2. The agency again discovered the **Redact** income in a state wage match, and petitioner reported that that job ended in early December, 2014. These actions occurred before the next review. I conclude that petitioner was not required to report M.K.'s return to work at **Redact**, and thus claim no. **Redact** should be rescinded.

CONCLUSIONS OF LAW

1. Petitioner was overpaid FS from November, 2013 through June, 2014 because he failed to report that his girlfriend began to work.
2. The agency incorrectly determined the overpayment for that period because it failed to account for increased income earned by petitioner and for UC received by petitioner in the overpayment calculation.
3. The correct overpayment amount for November, 2013 through June, 2014 was \$2,474.
4. Petitioner was not overpaid FS during the period September through December, 2014 because he was not required to report increased earnings during that period.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to amend overpayment claim no. **Redact** to be \$2,474, and to rescind claim no. **Redact**. The county shall do so within 10 days of this decision.

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 17th day of June, 2015

\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 June 17, 2015.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability