



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOP/165849

PRELIMINARY RECITALS

Pursuant to a petition filed May 6, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Rock County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on June 3, 2015, by telephone.

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

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact, Redact
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Rock County.
2. In 2013 petitioner received FS for a two-person household. On December 2, 2013 petitioner reported a new job at Redact. She would be working 40 hours per week at \$12.40 per hour.
3. The worker inadvertently entered the income as 40 hours bi-weekly at \$12.40 per hour. The county thus budgeted only one-half of petitioner's income.

4. At a six-month review in May, 2014, the error was discovered when petitioner provided her most recent pay stubs. The income was correctly then.
5. The county determined that petitioner was overpaid \$1,060 in FS from January 1 through April 30, 2014 due to agency error. The county determined the overpayment by entering correct income and figuring out the FS that petitioner would have received if not for the worker error.
6. The county notified petitioner about the overpayment, claim no. 8900419858, by a letter dated November 21, 2014.

### 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).

I note that normally an appeal of an FS action must be filed within 90 days of the action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b). This appeal was filed more than 90 days from the overpayment notice. Petitioner testified that she moved at about the time the notice was sent and the mail was not forwarded.

Even accepting that petitioner did not receive the notice, I nevertheless must conclude that the overpayment was determined correctly. Federal FS law requires the agency to recover all overpayments, including ones resulting totally from agency error. Thus although petitioner reported her job and income correctly, and the worker erred, petitioner still is responsible for repaying the overpayment. I reviewed the overpayment calculation and it is correct.

### CONCLUSIONS OF LAW

The agency correctly sought to recover an FS overpayment resulting from agency error.

**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 5th day of June, 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 June 5, 2015.

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