



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/165999

PRELIMINARY RECITALS

Pursuant to a petition filed May 12, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on June 23, 2015, at Appleton, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$2,370 from the Petitioner for the period of March 1, 2014 – July 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Luisa Mcky

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On October 8, 2013, the Petitioner contacted the agency to report her employment at [REDACTED]. On October 17, 2013, the agency received an employment verification indicating that [REDACTED].

the Petitioner works 24 hours/week at \$13.20/hour. The agency used this verification to budget the Petitioner’s income for determining FS eligibility.

3. On January 10, 2014, the Petitioner completed a Six Month Report Form. She reported no changes to her earned income.
4. On January 13, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would continue. It also informed her that she must report to the agency if her gross monthly income exceeds \$1,962.50 and must report it by the 10th day of the next month.
5. On September 12, 2014, the agency received employment and income verification for the Petitioner from [REDACTED]. The verification reports Petitioner’s earned income as follows:

January, 2014	\$4,506.51
February, 2014	\$2,355.12
March, 2014	\$1,988.90
April, 2014	\$2,511.22
May, 2014	\$2,132.58
June, 2014	\$1,957.98
July, 2014	\$2,658.20
6. On April 30, 2015, the agency received a wage discrepancy alert.
7. On May 1, 2015, the agency issued a FS Overpayment Notice and worksheet to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$2,370 for the period of March 1, 2014 – July 31, 2014 for failure to report earned income.
8. On May 12, 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, § 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, FS Handbook, § 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FS Handbook, § 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. Id.

The “discovery” date is “the date that the agency became aware of the potential that an overissuance may exist.” BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the evidence in the case comments indicates that the agency became aware of a potential overpayment on or about April 30, 2015.

At the hearing, the Petitioner testified that accurately reported her income at the time of her six month reviews and submitted information whenever the agency requested it. She stated that her income fluctuates and she believed the agency did not properly consider her income fluctuations in determining her FS eligibility and benefits. She asserts that any error that resulted in an overissuance was an error by the agency in incorrectly budgeting her income.

The agency testified that it used the employer verification it received when the Petitioner started her new job in October, 2013 to budget the Petitioner's income. When the Petitioner submitted her renewal in January, 2014, no changes were reported in income. There is no evidence that demonstrated the Petitioner submitted any pay statements or additional documentation other than the employer verification until September, 2014 when the Petitioner's employer submitted income verification for October, 2013 – September, 2014. Though this verification indicates a possible discrepancy with regard to the Petitioner's income, the agency did not act to further verify income or update the Petitioner's case until April 30, 2015 when another wage discrepancy alert was received.

The agency's failure to act in September, 2014 to further verify and update the Petitioner's case does not affect this overissuance action for the period of March 1, 2014 – July 31, 2014. The notice that was issued to the Petitioner in January, 2014 clearly informs her of the reporting requirements and the need to report if her gross monthly income exceeded \$1,962.50. The evidence clearly establishes that her income did exceed that reporting requirement in January, 2014. She was, therefore, required to report this to the agency by February 10, 2014 which would have impacted her benefits beginning March 1, 2014.

The Petitioner does not dispute the employer's income verification and does not dispute that she did not report to the agency when her income exceeded the reporting requirement. If she had, the agency would have reviewed the Petitioner's income and eligibility and no overissuance would have occurred.

Though it appears that the Petitioner's income fluctuates, it is the responsibility of the Petitioner to present sufficient documentation to the agency to determine the proper income for budgeting purposes. If the Petitioner did not agree with the agency's determination of her eligibility or allotment, she had the opportunity to appeal those determinations at the time of her six month reviews.

Based on the evidence presented, I conclude that the overissuance is the result of the Petitioner's failure to report her income when it exceeded the reporting requirement of \$1,962.50 in January, 2014. Therefore, the agency properly seeks to recover an overissuance of FS benefits from the Petitioner for the period of March 1, 2014 – July 31, 2014. However, I note that in determining the overissuance, the agency budgeted gross income of \$2,531.75 for each of the months of the overpayment. The evidence submitted by the Petitioner's employer provides the actual gross income of the Petitioner for each month of the overpayment. This is the income that the agency should have used in determining the amount of the overpayment.

I am remanding this matter to the agency to re-determine the amount of the overpayment based on the actual gross income of the Petitioner for the months of March 1, 2014 – July 31, 2014. The agency must issue a new notice of FS overissuance with the revised overpayment amount to the Petitioner. Petitioner may contest the new determination of the amount but not the Division of Hearings and Appeals determination that there is an overpayment. If she wishes to contest this determination that there is an overpayment she must note the rehearing and circuit court appeal instructions below.

CONCLUSIONS OF LAW

The agency correctly concluded that there was an overissuance of FS benefits to the Petitioner for the months of March 1, 2014 – July 31, 2014 based on the Petitioner's failure to report when her household income exceeded the reporting requirement. The agency must re-determine the amount of the overpayment based on Petitioner's actual gross income for the months of the overpayment.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to redetermine the amount of the overpayment for the period from March 1, 2014 through July 31, 2014 based on Petitioner's actual gross income for those months. A new Notice of Decision must be issued with the revised overpayment amount as well as the appropriate repayment agreement documents. The Notice must provide a new appeal right to the Petitioner for the amount of the overpayment only. This must be done within 10 days of the date of this Order.

In all other respects, this 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 6th day of July, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 6, 2015.

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