



FH

[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 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 August 13, 2015, by telephone. Hearings set for June 11 and July 9, 2015 were rescheduled at the petitioner's request.

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

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
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 # [REDACTED]) is a resident of Rock County.
2. In 2014 and 2015 petitioner received FS for a household that included her husband and children. Two of the children were between ages 18 and 22 during the period.
3. On June 16, 2014, the county sent petitioner a notice informing her that FS for July, 2014 would be \$228, based upon \$3,328 household income from [REDACTED] and child support. Exhibit 5.

[REDACTED]

The notice stated that if household income rose above \$3,423 in a month that the increase needed to be reported by the tenth of the next month.

4. Petitioner's husband had income from [REDACTED] and the 18-year-old daughter had income from [REDACTED] that was not reported.
5. In June, 2014 household income rose above \$3,423. Petitioner reported an increase in the [REDACTED] income on August 22, 2014, and FS were reduced to \$207 effective October 1, 2014. However, the county still was not budgeting income from the other unreported employment.
6. The county later determined that if petitioner had reported the increased income by July 10, 2014, along with the unreported jobs, FS would have ended beginning August 1, 2014. In addition, the income reported on August 22, 2014 still was below the actual income received. The county determined that petitioner was overpaid \$713 in FS in August, September, and October, 2014. Exhibit 1.
7. The [REDACTED] job ended in October, 2014. In December petitioner's husband began to work at [REDACTED] but the job was not reported until January 26, 2015. When the job was reported the [REDACTED] income was under-reported because petitioner missed a pay check that was deposited directly. Income went above the reporting requirement in December, which would have resulted in reduced FS beginning February 1, 2015. The county later determined that petitioner was overpaid \$635 in FS in February, 2015. Exhibit 1.
8. By notices dated April 30, 2015, the county informed petitioner that she was overpaid FS from April, 2014 through February, 2015, claim no. [REDACTED]. After petitioner appealed the county revised the overpayment to include only the months of August through October, 2014, and February, 2015, for a total overpayment of \$1,348. All adults in the household, including the two adult daughters, were listed as liable on the claim.
9. While reviewing the case for the appeal in May, 2015, the county discovered an agency error overpayment for the period January through March, 2014. The county notified petitioner that there was a \$772 overpayment during that period due to a worker error entering income, claim no. [REDACTED].

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 conclude that the revised FS overpayment in claim no. [REDACTED] is correct. Petitioner raised several issues during the hearing, but none affects the calculation.

Second, I conclude that the agency error overpayment for early 2014, even if correctly determined, cannot be recovered. A non-client error overpayment is recovered only for the period within one year of the discovery of the overpayment. FS Handbook, App. 7.3.2.1. In this case the error was discovered in May, 2015, but the overpayment occurred more than one year prior (January through March, 2014). Thus claim no. [REDACTED] must be rescinded.

[REDACTED]

Petitioner explained during the hearing that the increase in income for her husband was due to receiving vacation/disability pay all at once. The problem is that, had that happened, there would have been a one-month increase with income returning to normal thereafter. Actual income increased from June through October. Furthermore, petitioner still had the duty to report the increase even if it was short-term.

Petitioner testified that the [REDACTED] job was reported; however, there is no record in case notes of the job being reported until February, 2015, after the wage match showed the job. See FS Handbook, App. 4.2.2.2, no. 3; earned income of students under age 18 is disregarded, but only until they turn 18. Petitioner also stressed that her daughter earned only \$418 total in 2014. The state wage record shows that she worked for two separate [REDACTED] entities in 2014, and while it is true that for one of those entities total income was just \$418, the other entity shows substantially more income. I cannot ignore the income from the second entity without evidence that the state wage record is erroneous.

Petitioner testified that the [REDACTED] job was self-employment and that income from it was offset by losses. The income is shown on the state wage record as employee income, however, and thus it should have been reported.

Petitioner testified that at some point child support went down, but any decrease was not reported until May, 2015. Exhibit 2, page 1. The decrease thus would not affect the overpayment calculation.

She finally noted that her husband's income was about \$300 lower in February, 2015 than was budgeted in the overpayment calculation. However, the net income as budgeted was \$1,800 more than the FS net income limit. \$300 lower actual income would not bring net income down that far.

Finally, petitioner requested that the two daughters be removed as liable parties. I do not have that authority because the federal rules do not allow exceptions. If the parents make a repayment agreement and stick to it, the daughters will not be affected.

CONCLUSIONS OF LAW

1. The county's revised FS overpayment calculation was calculated correctly to be \$1,348.
2. The agency-error overpayment dating back to early 2014 cannot be recovered because it was discovered more than one year after the error.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind overpayment claim no. [REDACTED] within 10 days of this decision. In all other respects the petition for reviewed 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

[REDACTED]

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 19th day of August, 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 August 19, 2015.

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