FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/166140

PRELIMINARY RECITALS

Pursuant to a petition filed May 18, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on June 11, 2015, at West Bend, Wisconsin.

The issue for determination is whether the petitioner was overpaid $300 in FoodShare (FS) benefits in June and July 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

Mary Dubey appeared for petitioner,
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Tony Gehring
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:
Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [redacted]) is a resident of Washington County. In 2013 the petitioner was a household size of three consisting of himself, his wife, and their son.

2. On February 7, 2013 the household applied for FoodShare (FS) benefits.

3. On February 28, 2013 the agency sent the petitioner a notice stating that the family applied for FS benefits on February 7, 2013, and that the family was eligible for those benefits. The notice further stated that the family would receive a prorated amount of $117.00 in February, and $150 each month effective March 1, 2013. The notice went on to explain that if the family's income went above $2,069.00, before taxes, the family had an obligation to report that income by the 10th day of the following month.

4. In April 2013 the family's gross income was above $2,069.00. The family did not report this increase in income. The increase was due to the petitioner's seasonal employment beginning again.

5. The agency sent the petitioner a notice of overpayment stating that the petitioner was overpaid $300 in FS benefits in June and July 2013. The petitioner timely appealed that notice.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare 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 Code of Federal Regulations (CFR) § 273.18(b), see also FoodShare Wisconsin Handbook (FSH), §7.3.2.*

In this case the petitioner does not dispute the overpayment or the amount of the overpayment. Rather the petitioner appealed because it was "not [their] intention to mislead anyone." At the hearing the petitioner's wife stated that she did not realize that she had to report that the petitioner returned to work. The agency found her credible, and stated that the overpayment is due to client error. The agency is not pursuing an intentional program violation, and believes that this was simply a mistake or oversight by the family.

The rules and policy direct the agency to establish an overpayment when there is a client error or mistake. This is what the agency did in this case. That is the correct action. I further note that I reviewed the FS budgets, and the agency is correct that the household was ineligible for FS benefits in June and July 2013. Further, the family's income went over the 130% FPL reporting requirement in April 2013. That increase was to be reported by May 10, 2013. Those changes then would have gone into effect in June 2013. This caused the overpayment during June and July 2013. The family did not receive FS benefits after July 2013.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was overpaid $300 in FoodShare (FS) benefits in June and July 2013.

THEREFORE, it is **ORDERED**

That the petition 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 12th day of June, 2015

_____

\sCorinne Balter
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 June 12, 2015.

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