



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FOP/166424

PRELIMINARY RECITALS

Pursuant to a petition filed June 4, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on June 24, 2015, by telephone.

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

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Redact
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Milwaukee County.
2. Petitioner received FS as a one-person household during the years 2012 through 2014. At all times he received FS either no income was budgeted or unemployment compensation (UC) only was budgeted. At no time did petitioner report earned income, and earned income was never budgeted.

3. In March, 2015 the agency found a state wage match showing that petitioner had earned income in all three years. The agency obtained petitioner's earnings records from **Redact**, where petitioner worked during the three years in question.
4. Using the earnings record and petitioner's UC history, the agency recreated the FS benefit history, determining the amounts of FS petitioner would have received had the income been budgeted correctly.
5. By notices dated May 12, 2015, the agency informed petitioner that he was overpaid \$1,400 in FS from April 1 through October 31, 2012, claim no. **Redact**, \$533 from August 9 through November 30, 2013, claim no. **Redact**, and \$721 from August 1 through November 30, 2014, claim no. **Redact**. Essentially the agency found that all FS issued to petitioner during those three periods were overpayments because his earned income would have put him over the FS income limits.

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). One exception in the calculation is that if the overpayment results from the failure to report earned income, the agency shall not utilize the earned income deduction in determining the amount of FS that would have been issued if the income had been reported. 7 C.F.R. §273.18(c)(1)(ii).

Petitioner did not dispute his failure to report his earned income. He questioned the budgeting of UC during 2012, but in 2012 the state UC record shows no UC paid, and none was budgeted originally or in the overpayment calculation. The overpayment for all three years was due to the failure to budget earned income, and the agency used the employer's records to determine the earned income petitioner received.

I conclude that the agency correctly determined the FS overpayments for the three periods in question. I reviewed the calculations and found no errors.

CONCLUSIONS OF LAW

The agency correctly determined three FS overpayment claims for periods in 2012, 2013, and 2014 resulting from petitioner's failure to report earned income.

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 26th 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 26, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability