FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/166467

PRELIMINARY RECITALS

Pursuant to a petition filed June 05, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Calumet County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 07, 2015, at Chilton, Wisconsin.

NOTE: At the parties' request, the record was held open until the end of the day on July 7, 2014, to give them an opportunity to supplement the record.

The Petitioner submitted bankruptcy paperwork. It has been marked as Exhibit 2 and entered into the record.

The agency submitted a Manual FoodShare Overpayment Notice dated May 4, 2015 – claim [redacted], a Notice of Proof needed dated October 1, 2014, Case Comments, a detailed summary print out, Overpayment Correspondence dated May 2, 2015 from [redacted], a referral print out, a unsigned manual Notification of FoodShare Overissuance dated May 2, 2015 and a report from [redacted].

Most of the above documents fall outside the scope of the hold. The record was held open only to receive the agency's hearing summary and a report from [redacted]. The agency did not request permission to add any other documents to the record, even after being asked if they were relying on anything other than their summary.

Presuming the summary to which Calumet County was referring was the Overpayment Correspondence, it is marked as Exhibit 3. The [redacted] report has been marked as Exhibit 4. No other documents have been marked as exhibits.

The issue for determination is whether Calumet County Department of Human Services (the agency) correctly determined the Petitioner was overpaid FoodShare benefits for the period of August 1, 2014 through October 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651

Madison, Wisconsin 53703
By: Ann Knaus, Economic Support Specialist
Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Calumet County.
2. The Petitioner filed an appeal that was received by the Division of Hearings and Appeals on June 5, 2015. (Exhibit 1)

DISCUSSION

The agency asserts that the Petitioner is liable for an overpayment of FoodShare benefits made to his wife between August 1, 2014 through October 31, 2014, because she failed to report the Petitioner's income. There is no assertion and no evidence forwarded by the agency that Petitioner's appeal is untimely.

The agency bears the burden to prove the Petitioner was overpaid FoodShare benefits. The agency has not met its burden of proof.

First, the agency provided no overpayment notices addressed to the Petitioner. Second, the agency provided no documentation, such as applications, case comments, or six month report forms to show what the Petitioner's wife actually reported about her household. Third, the agency did not provide any evidence, such as notices of decision or applications, showing that the Petitioner's wife was told what her reporting requirements were. Fourth, the agency provided no documentation, such as a Food Stamp History Disbursement Printout showing what benefits were actually paid to the Petitioner's wife. Fifth, the agency did not provide any documentation showing what Petitioner's household income was during the time in question.

The agency hired [redacted] to investigate the overpayment and calculate the claim. According to [redacted], the Overpayment Specialist from [redacted], she took a full overpayment, which assumes the Petitioner wasn't entitled to any benefits, because she did not receive a response to a request for income verification and because she was unable to pull up a State Wage Record. FoodShare overpayments may not be calculated in this manner.

Federal Regulations require that a FoodShare overpayment be calculated by determining the "correct" amount of FoodShare benefits a household was entitled to receive in a given month, minus the FoodShare benefits actually issued. *See* 7 C.F.R. §273.18(c)(1), *See also* Final Decision in case FOP/162449.

This means obtaining the best information possible about household income and doing an actual income determination, even if the FoodShare recipient / household is not cooperative.

Indeed, if a household does not return a verification of income, there is nothing that prevents the agency from contacting an employer directly and requesting verification of information. Per Income Maintenance Manual §9.1.3.5, the Department of Health Services may contact third-parties, such as employers, to obtain verification. The manual references Wis. Stats. §49.22(2m) (formerly 46.25(2m)), which requires third-parties to provide the requested verification within seven days.

Because the agency did not establish the "correct" amount of benefits, it cannot prove the Petitioner was overpaid benefits.

It should be noted that this decision does not preclude the agency from issuing a new overpayment notice, once it determines the actual benefit amount that Petitioner should have received. If the Petitioner disagrees with that determination, he will have to file a NEW appeal.

CONCLUSIONS OF LAW

The agency did not meet its burden to prove the Petitioner was overpaid FoodShare benefits for the period of August 1, 2014 through October 31, 2014.

THEREFORE, it is **ORDERED**

That the agency rescind overpayment claim number [redacted]. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

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 8th day of July, 2015

\sMayumi M. Ishii
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 8, 2015.

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