



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOP/166596

PRELIMINARY RECITALS

Pursuant to a petition filed June 11, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by Brown County Human Services to recover FoodShare benefits (FS), a hearing was held on July 1, 2015, by telephone.

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

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact, ES Supervisor
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Brown County.
2. Petitioner receives FS as a one-person household. She had a review in September, 2014, and at the review she reported that her utilities were included in her rent except for her telephone. Petitioner did not receive energy assistance in the prior year.
3. In 2014 the Department changed its policy toward counting shelter expenses in the FS determination. Previously all FS households received a \$450 utility expense. The policy changed to provide that only expenses actually paid by the household can be counted unless the person

received energy assistance in the prior year. It took effect for each individual household at the first renewal that occurred after April 1, 2014.

4. Petitioner's worker checked yes to the question whether petitioner received energy assistance, which was a mistake by the worker.
5. A state auditor discovered the error in May, 2015. Had the energy assistance question been answered correctly petitioner would have been eligible for only \$16 per month FS instead of the \$54 she received each month. Effective June 1, 2015 petitioner's FS were reduced to \$16.
6. By a notice dated May 26, 2015, the county informed petitioner that she was overpaid \$328 in FS during the period October 1, 2014 through May 31, 2015, claim no. Redact.

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). 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).

Prior to the federal 2014 Farm Bill the Wisconsin Department of Administration issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance. This policy allowed Wisconsin to grant all FS households the Heating Standard Utility Allowance of \$450. Actual utility usage did not matter.

The 2014 Farm Bill changed this practice. The 2014 Farm Bill requires a household to have received an energy assistance payment of greater than \$20 to receive the \$450 utility standard. 7 U.S.C. 2014(e)(6)(C)(ii)(I). Therefore households that do not receive energy assistance receive the utility standard based on the utility obligation actually incurred by the household. Petitioner did not receive energy assistance and her only monthly utility obligation is her phone.

That change caused petitioner's net income upon which the FS allotment is based to increase, resulting in petitioner being eligible for only the \$16 minimum monthly FS allotment. The change would have occurred in October, 2014, the first month after petitioner's FS review.

I must conclude that the county correctly determined the overpayment. Federal FS rules require that it recover the overpayment even when the error was made by an agency worker.

CONCLUSIONS OF LAW

The county correctly determined that petitioner was overpaid \$328 FS between October 1, 2014 and May 31, 2015.

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 3rd day of July, 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 July 3, 2015.

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