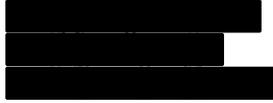




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/166722

PRELIMINARY RECITALS

Pursuant to a petition filed June 15, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on August 20, 2015, at Green Bay, Wisconsin. The record was held open post-hearing to allow the Petitioner submit a closing brief. The Petitioner's representative submitted a brief on August 31, 2015. The agency did not submit any additional evidence or argument. The record was closed on September 8, 2015.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,159 from the Petitioner for the period of June 1, 2014 – January 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Norene Meidl

Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Brown County.

2. On August 8, 2013, the Petitioner submitted an online application for FS benefits. He reported a household size of one. He reported employment with [REDACTED] with a start date of July 1, 2013 and an end date of July 19, 2013. His final paycheck was July 26, 2013. He reported no other income.
3. On October 7, 2013, the agency issued a Notice of Decision to the Petitioner informing him that effective November 1, 2013, his FS benefits would decrease from \$200/month to \$189/month. This was based on no reported household income. The notice also informed the Petitioner that if his household's gross monthly income exceeded \$1,245, he must report it to the agency by the 10<sup>th</sup> day of the next month.
4. On December 23, 2013, the Petitioner submitted a Six Month Report Form (SMRF). He reported employment with [REDACTED], 20 hours/pay period at \$10/hour. He reported that the employment ended on December 20, 2013. He reported no other income.
5. On August 13, 2014, the Petitioner completed a FS renewal. He reported a household size of one. He reported employment at [REDACTED] with a start date of July 1, 2013. He reported that he works 5 hours/week. He also reported unemployment compensation benefits with a start date of May 29, 2013.
6. On August 14, 2014, the agency issued a Notice of Decision to the Petitioner informing him that effective September 1, 2014, his FS benefits would be \$189/month based on his reported income of \$0. The notice also informed the Petitioner that if his household's gross monthly income exceeded \$1,245, he must report it to the agency by the 10<sup>th</sup> day of the next month.
7. On September 8, 2014, the agency issued a Notice of Decision to the Petitioner informing him that effective October 1, 2014, his FS benefits would increase from \$189/month to \$194/month. This was based on no reported household income. The notice also informed the Petitioner that if his household's gross monthly income exceeded \$1,265, he must report it to the agency by the 10<sup>th</sup> day of the next month.
8. On October 20, 2014, the Petitioner reported employment with [REDACTED] with a start date of July 1, 2014. He reported that he is paid bi-weekly.
9. On March 23, 2015, the agency's investigative contractor issued a request for Petitioner's employment and income verification to various employers of the Petitioner including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]. All employers except [REDACTED] responded and verified the following actual gross income for the Petitioner:

April, 2014	\$ 808.50	( [REDACTED] )
May, 2014	\$1,696.40	( [REDACTED] )
	\$ 228.75	( [REDACTED] )
June, 2014	\$1,194.03	( [REDACTED] )
	\$1,311.50	( [REDACTED] )
July, 2014	\$ 968.63	( [REDACTED] )
August, 2014	\$0	
Sept., 2014	\$0	
October., 2014	\$0	
Nov., 2014	\$864.43	( [REDACTED] )
Dec., 2014	\$0	

January, 2015 \$744.63 ( [REDACTED] )

10. The state wage record shows that [REDACTED] reported that the Petitioner earned the following wages:
- |                              |  |
|------------------------------|--|
| 4 <sup>th</sup> quarter 2014 | \$1,062.05 (\$354.16/month x 3 months) |
| 1 <sup>st</sup> quarter 2015 | \$2,233.91 (\$744.63/month x 3 months) |
12. On May 18, 2015, the agency issued a FS Overpayment Notice to the Petitioner informing him that the agency intends to recover an overissuance of FS benefits in the amount of \$1,159 for the period of June 1, 2014 – January 31, 2015 due to client error in failing to accurately report household income.

### DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS 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 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. Id.

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

In this case, the agency demonstrated that the Petitioner had a requirement to report that his income in May, 2014 of \$1,925.15 exceeding the reporting requirement of \$1,245 which represents 130% of the federal poverty level (FPL). He was required to report this to the agency by June 10, 2014 which would have impacted his benefits for July, 2014. Likewise, he continued to exceed the 130% FPL in June, 2014 when his income was \$2,505.53. The agency properly concluded that the Petitioner was not eligible for benefits in July and August, 2014 and properly seeks to recover the \$189 in FS that Petitioner was issued in each of those months. At the hearing, the Petitioner concedes there was an overpayment for July and August, 2014. At the hearing, the agency conceded that it improperly started the overpayment in June, 2014 and that it cannot recover the Petitioner's June FS benefits.

The agency argues that the Petitioner had a continuing requirement to report and therefore asserts that it properly continued the overpayment period through January, 2015. The agency's argument is without merit based on the facts of this case. In August, the Petitioner completed a renewal and reported accurately that his household income was \$0. The agency determined his benefits and sent a Notice of Decision on August 14, 2014 informing him of his eligibility for benefits and informed him of the requirement to report if his income exceeded \$1,245. On September 8, 2014, another Notice of Decision was issued informing the Petitioner that his reporting requirement was \$1,265.

From July, 2014 – January, 2015, the Petitioner's income never exceeded 130% FPL so he was not required to report his income to the agency during that time. Therefore, the agency may not recover any benefits for the period of September, 2014 – January, 2015. At the hearing, the Petitioner's representative pointed out a number of mathematical errors made by the agency in determining the Petitioner's income and the amount of the overpayment. Specifically, the agency failed to properly calculate the average monthly income from [REDACTED] and failed to consider the standard deduction in determining

the amount of benefits the Petitioner was entitled to in calculating the overpayment. Because the agency may only recover the FS benefits issued to the Petitioner for July and August, 2014, there is no need to correct the errors that were made.

### CONCLUSIONS OF LAW

The agency properly seeks to recover FS benefits from the Petitioner in the amount of \$378 for the months of July and August, 2014 due to the Petitioner's failure to report monthly income exceeding 130% FPL. The agency may not recover FS benefit for June, 2014 or for the months of September, 2014 – January, 2015 as the Petitioner's income did not exceed 130% FPL and he was not required to report his income to the agency.

**THEREFORE, it is**

### ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to revise the overpayment claim against the Petitioner to \$378 for the months of July and August, 2014 and to cease all actions to collect an overpayment from the Petitioner for the months of June, 2014 and September, 2014 – January, 2015 based on the assertion that the Petitioner failed to report income exceeding 130% FPL. These actions shall be completed as soon as possible but no later than 10 days from the date 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**

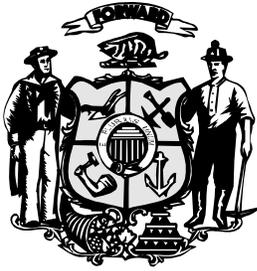
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 21st day of September, 2015

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\sDebra Bursinger  
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 September 21, 2015.

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

