



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/167636

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 20, 2015, at Racine, Wisconsin. The record was held open post-hearing. Additional information was submitted on August 26, 2015 and the record was closed.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits as follows:

Table with 4 columns: Date Range, Amount, Claim #, and Redacted. Rows include periods from 7/1/2011 to 2/1/2015 with amounts ranging from \$475.00 to \$1,310.00.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jelena Jones

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County. Petitioner has received FS benefits since at least 2010. Petitioner's son [REDACTED] was born in 1994.
2. On May 18, 2011, the Petitioner's employer [REDACTED] submitted an Employer Verification of Earnings (EVFE) to the agency reporting that the Petitioner works 40 hours/week at \$13.59/hour.
3. On May 23, 2011, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease from \$714/month to \$241/month effective July 1, 2011. The notice informed her that this was based on a household size of 5 and gross monthly household income of \$2,397.86 that included earned income from [REDACTED] of \$543.60/week and child support income of \$10.62/month for [REDACTED], \$9.88/month for [REDACTED], \$9.88/month for [REDACTED] and \$30/month for [REDACTED]. The notice also informed the Petitioner of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income went over \$2,794.
4. On or about April 17, 2012, the Petitioner completed a renewal. She reported a household of 6. She reported employment at [REDACTED]. On April 24, 2012, the Petitioner submitted pay statement from [REDACTED] for the periods ending April 1, 2012 and April 8, 2012. On May 3, 2012, the Petitioner's employer [REDACTED] submitted an EVFE to the agency reporting that the Petitioner works 40 hours/week at \$14.23/hour.
5. On June 5, 2012, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be \$401/month effective June 1, 2012. The notice informed her that this was based on a household size of 6 and gross monthly household income of \$2,508.05 that included earned income from [REDACTED] of \$569.20/week and child support income of \$10.62/month for [REDACTED] and \$49.87/month for [REDACTED]. The notice also informed the Petitioner of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income went over \$3,249.
6. On June 29, 2012, October 2, 2012, and April 9, 2013 the Petitioner's employer [REDACTED] submitted an EVFE to the agency reporting that the Petitioner works 40 hours/week at \$15.23/hour.
7. On September 4, 2012, the Petitioner submitted a Six Month Report Form (SMRF) to the agency. She reported a household of 6. She reported employment at [REDACTED]. She reported she no longer receives child support for [REDACTED].
8. On October 5, 2012, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be \$439 for October, 2012 and \$396/month effective November 1, 2012. The notice informed her that this was based on a household size of 6 and gross monthly household income of \$2,672.56 that included earned income from [REDACTED] of \$609.20/week and child support income of \$3.37/month for [REDACTED], \$3.37/month for [REDACTED] and \$46.26/month for [REDACTED]. The notice also informed the Petitioner of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income went over \$3,356.
9. On or about March 20, 2013, the Petitioner completed a renewal. She reported a household of 6. She reported her employment at [REDACTED] and [REDACTED]'s employment at [REDACTED]. On April 5, 2013, the agency received an EVFE from [REDACTED] reporting an end of employment date of December 28, 2012 for the Petitioner's son [REDACTED] and a final paycheck with gross wages of \$1600 on January 4, 2012.
10. On April 25, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would remain the same. The notice also informed the Petitioner of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income went over \$3,055.68.
11. On May 17, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be reduced to \$122/month effective June 1, 2013. The notice informed her that

this was based on a household size of 5 and gross monthly income of \$2,902.18 that included earned income from [REDACTED] of \$609.20/week and child support income of \$87.04/month for [REDACTED], \$87.04/month for [REDACTED], \$59.08/month for [REDACTED] and \$49.46/month for [REDACTED]. The notice also informed the Petitioner of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income went over \$2,927.

12. On September 5, 2013, the Petitioner submitted a SMRF to the agency. She reported a household of 6. She reported her employment at [REDACTED]. On September 6, 2013, the agency received an EVFE from [REDACTED] reporting Petitioner works 40 hours/week at \$15.37/hour.
13. On November 18, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would remain the same. The notice also informed the Petitioner of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income went over \$4,250.38.
14. On or about March 25, 2014, the Petitioner completed a renewal. She reported a household of 6. She reported her employment at [REDACTED]. On June 18, 2014 and October 22, 2014, the agency received an EVFE from [REDACTED] reporting Petitioner works 40 hours/week at \$16.04/hour.
15. On October 8, 2014, the Petitioner submitted a SMRF to the agency. She reported a household of 6. She reported her employment at [REDACTED]. On December 8, 2014, the agency received an EVFE from [REDACTED] reporting Petitioner works 40 hours/week at \$15.04/hour.
16. On December 10, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be \$230/month effective December 1, 2014. The notice informed her that this was based on a household size of 5 and gross monthly income of \$2,742.67 that included earned income from [REDACTED] of \$601.60/week and child support income of \$36.31/month for [REDACTED], \$36.31/month for [REDACTED], \$55.13/month for [REDACTED] and \$28.04/month for [REDACTED]. The notice also informed the Petitioner of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income went over \$3,024.
17. Petitioner was employed with [REDACTED] from April 25, 2011 through at least March 21, 2014. Her actual income, for the months relevant to the overpayment, was as follows:

May, 2011	\$2,940.13	June, 2012	\$3,389.25	January, 2013	\$2,979.84
June, 2011	\$3,430.75	July, 2012	\$2,441.73	February, 2013	\$3,364.60
July, 2011	\$3,834.85	August, 2012	\$3,648.31	March, 2013	\$4,813.30
August, 2011	\$3,654.81	Sept., 2012	\$2,638.25	April, 2013	\$4,089.53
Sept., 2011	\$4,386.04	Oct., 2012	\$2,590.20	May, 2013	\$4,656.69
October, 2011	\$2,786.34	Nov., 2012	\$3,956.51	June, 2013	\$3,943.42
		Dec., 2012	\$2,125.77	July, 2013	\$3,530.65
				August, 2013	\$4,021.74
				Sept., 2013	\$4,168.90
				Oct., 2013	\$2,137.70
				Dec., 2014	\$3,084.50
				January, 2015	\$2,894.61
				February, 2015	\$3,136.70
				March, 2015	\$3,739.40
				April, 2015	\$1,638.21

18. On June 22, 2015, the agency issued FS Overpayment Notices to the Petitioner informing her that the agency intends to recover overissuances of FS benefits as follows:

7/1/2011 – 8/31/2011	\$ 482.00	(Claim # [REDACTED])
8/1/2012 – 9/30/2012	\$ 435.00	(Claim # [REDACTED])
1/1/2013 – 5/31/2013	\$1,310.00	(Claim # [REDACTED])
6/1/2013 – 9/30/2013	\$ 488.00	(Claim # [REDACTED])
2/1/2015 – 3/31/2015	\$ 475.00	(Claim # [REDACTED])

19. On June 22, 2015, the agency issued FS Overpayment Notices to the Petitioner’s son [REDACTED] informing him that the agency intends to recover overissuances of FS benefits as follows:

8/1/2012 – 9/30/2012	\$ 435.00	(Claim # [REDACTED])
1/1/2013 – 5/31/2013	\$1,310.00	(Claim # [REDACTED])

**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 (FSH), § 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 FSH, § 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FSH, § 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. Id.

All adults that were included in the household or should have been included in the household at the time the overpayment occurred are liable for the repayment of the overissuance of FS benefits. FSH, § 7.3.1.2; see also 7 CFR 273.18(a)(4)(i).

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken 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 alleges that the Petitioner failed to report to the agency when her gross monthly income exceeded the reporting requirement of 130% Federal Poverty Level (FPL). The agency submitted evidence of the Petitioner’s actual wages and reported income.

The Petitioner does not dispute her actual wages or the income that she and her employer reports. She argues that she always reported her employment and income during renewals and her employers submitted employment verifications as requested. She further asserts that her son [REDACTED] should not be liable for an overpayment that occurred on her case.

The evidence demonstrates that the Petitioner did submit requested employment verifications at her renewals. The agency is not alleging that she misrepresented the information regarding her employment. However, FS recipients are required to report if their actual gross wages exceed 130% FPL between renewals. Petitioner was notified of the reporting requirement in the notices issued throughout the period from 2011 – 2015. The Petitioner conceded that she was not aware of the reporting requirement. She felt she had done what she was required to do when her employment verifications were submitted at renewals.

I reviewed each of the overpayment claims. Based on the Petitioner’s actual wages, I conclude that the agency properly determined the months when the Petitioner was required to report that her income had exceeded the 130% FPL limit and properly determined the months in which the Petitioner was overissued FS benefits because of the failure to report. I further reviewed the agency calculations of the overpayments. The Petitioner was credible in her testimony that she was not aware of the requirement to report. She is, however, still responsible to repay for the FS benefits that were overissued as a result of her failure to report when required.

With regard to the Petitioner’s son [REDACTED], he turned 18 in 2012. As an adult in the household, he is responsible under the law for any overpayment that occurred while he was an adult and a part of the household.

**CONCLUSIONS OF LAW**

The agency properly seeks to recover the following overissuances of FS benefits to the Petitioner:

7/1/2011 – 8/31/2011	\$ 482.00	(Claim # [REDACTED])
8/1/2012 – 9/30/2012	\$ 435.00	(Claim # [REDACTED])
1/1/2013 – 5/31/2013	\$1,310.00	(Claim # [REDACTED])
6/1/2013 – 9/30/2013	\$ 488.00	(Claim # [REDACTED])
2/1/2015 – 3/31/2015	\$ 475.00	(Claim # [REDACTED])

**THEREFORE, it is** **ORDERED**

That the Petitioner’s appeal 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 24th 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 24, 2015.

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