



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/169317

PRELIMINARY RECITALS

Pursuant to a petition filed October 7, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Ashland County Department of Human Services in regard to FoodShare benefits, a hearing was held on November 18, 2015, at Ashland, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare that occurred because of the agency's error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Ashland County Department of Human Services
630 Sanborn Avenue
Ashland, WI 54806

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Ashland County.
2. The county agency seeks to recover \$2,623 in FoodShare provided to the petitioner's household from March 2014 through February 2015. This amount includes \$119 paid each month from

March 2014 through August 2014, \$319 paid in September 2014, and \$318 paid each month from October 2014 through February 2015.

3. When determining the petitioner's FoodShare allotment, the agency assumed his household had no income from March through August 2014 and \$688 in earned income from September 2014 through February 2015.
4. The petitioner's actual gross household income was \$830.58 a month from March through August 2014 and \$1,518.58 from September 2014 through February 2015. All of this income was earned.
5. The petitioner paid \$375 in rent plus all of his utilities each month.
6. There are two persons in the petitioner's household.

DISCUSSION

FoodShare agencies must "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all overpayments, regardless of whose error caused the overpayment. The amount of FoodShare a household receives depends upon its size and net income. The county agency seeks to recover \$2,623 in FoodShare provided to the petitioner's household from March 2014 through February 2015. This amount includes \$119 paid each month from March 2014 through August 2014, \$319 paid in September 2014, and \$318 paid each month through February 2015. The agency seeks to recover this amount because it incorrectly calculated the petitioner's self-employment income even though he provided it with the correct figures.

The petitioner's countable profit from his business was \$9,967 for the year, or \$830.58 per month. But the FoodShare worker incorrectly added his net profit to the total expenses, which made it appear that he had no income from his business. He lives with his son. As a two-person household with no income, he received \$347 per month in FoodShare when he should have received only \$228. Then in August 2014 he reported that his son earned \$688 per month. After allowable deductions, a two person household earning \$688 per month would still receive \$347 in FoodShare per month. This amount rose to \$357 in October 2014. But if the son's \$688 income had been added to the \$830.58 per month the petitioner earned, the FoodShare allotment after allowable deductions would have been only \$28 per month in September 2014 and \$38 each month after that.

The agency included an overpayment worksheet with its September 24, 2015, overpayment notice. *Exhibit 1*. This worksheet includes both the actual budget initially used to determine benefits and the corrected budget to determine what the petitioner's household should have received. I have reviewed the data in that worksheet and find no errors.

Without going through each portion of the calculation, what is important to understand is that the amount of FoodShare one receives is based upon household size and net income. Net income for FoodShare is determined after subtracting from gross income those deductions—and only those deductions—found in 7 CFR § 273.9(d). This is somewhat confusing when dealing with self-employment income because one is entitled to business deductions from gross receipts to determine net income for income tax purposes. But this net income figure is not the one used to determine net income for FoodShare. Rather the taxable net income as determined by the IRS is (with a few minor exceptions) the gross income that is the starting point when determining net income for FoodShare.

The first deduction allowed against gross income in FoodShare determinations is a standard deduction. This deduction was initially \$152 and then rose to \$155 for a family with up to three members during the period of the overpayment. *FoodShare Wisconsin Handbook*, § 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). The second deduction is the earned income deduction equal to 20% of the petitioner's household's earned

income. 7 CFR § 273.9(d)(2). The last deduction he was entitled to is the entitled the shelter deduction. This is a fairly complex calculation that equals the amount that housing costs, including a standard utility allowance (currently set at \$458 but slightly less last year), exceed 50% of the net income remaining after subtracting all other deductions from gross income. *FoodShare Wisconsin Handbook*, § 4.6.7; 7 C.F.R. § 273.9(d)(6)(ii); *FoodShare Wisconsin Handbook*, § 8.1.3. In the petitioner's case, this would be the amount his \$375 rent plus the utility allowance exceed 50% of his gross income remaining after subtracting the standard deduction and the earned income deduction. This deduction is not unlimited.. During the overpayment period, the maximum allowed was \$478 from March through September 2014 and \$490 after that. The agency allowed the maximum shelter each month throughout the relevant period but then correctly determined that it should have been \$118.77 through August 2014 and then nothing after this.

After determining monthly net income and household size, the correctly FoodShare allotment is found in a table located at *FoodShare Wisconsin Handbook*, § 8.1.2. The amount the agency determined the petitioner should have received matches the figures for a two-person household with his household's net income.

CONCLUSIONS OF LAW

The petitioner must repay an overpayment of FoodShare that occurred from March 2014 through February 2015 because of the FoodShare agency's error.

THEREFORE, it is

ORDERED

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 Madison,
Wisconsin, this 1st day of December, 2015

\sMichael D. O'Brien
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 December 1, 2015.

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