



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/169325

PRELIMINARY RECITALS

Pursuant to a petition filed October 06, 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 October 29, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$1,888 in FoodShare (FS) benefits for the period of July 1, 2012 to November 30, 2012, and February 26, 2013 to January 31, 2014 due to client error.

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:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Racine County. The petitioner was a household of 3 during the overpayment periods.

2. The agency received two state wage and income collection (SWICA) discrepancies. They received the first discrepancy in February 2014 and the second discrepancy in February 2015. These discrepancies showed that the petitioner's household income was higher than what the household had reported to the agency.
3. In July 2012 the household completed a six month report form (SMRF). The household reported a monthly gross income of \$2,268.51. The actual household gross income in July 2012 was \$2,660.47. The petitioner's wife's employer verified her income at the incorrect reported amount using an employer verification of earnings form.
4. The agency does not allege a FS overpayment between November 30, 2012 and February 26, 2013. At some point between December 2012 and February 2013 the household's FS benefits ended.
5. On February 26, 2013 the household reapplied for FS benefits. The household reported that a monthly gross income of \$2,453.92. The actual household gross income in February 2013 was \$4,794.20. The petitioner's wife's employer verified her income at the incorrect reported amount using an employment verification of earnings form.
6. In August 2013 the household completed a six month report form. The household reported a monthly gross income significantly lower than the actual household gross income of \$2,935.99 in July 2013. The record is not clear whether or not the employer verified the petitioner's wife's income at the lower reported amount. However, the record is clear that the household underreported income at this certification period.
7. The petitioner's household actual income during the overpayment was as follows: \$2,660.47 in July 2012, \$4,281.44 in August 2012, \$2,717.84 in September 2012, \$2,543.06 in October 2012, \$3,328.82 in February 2013, \$4,794.20 in March 2013, \$2,924.29 in April 2013, \$2,603.73 in May 2013, \$3,258.72 in June 2013, \$2,935.99 in July 2013, \$4,281.40 in August 2013, \$2,850.43 in September 2013, \$2,751.09 in October 2013, \$2,775.93 in November 2013, \$2,997.26 in December 2013, and \$4,540.08 in January 2014.
8. On September 24, 2015 the agency sent the petitioner two notices of overpayment. The first overpayment notice, for claim number [REDACTED], stated that the petitioner was overpaid \$718 in FS benefits between July 1, 2012 and November 30, 2012. The second overpayment notice, for claim number [REDACTED], stated that the petitioner was overpaid \$1,170 in FS benefits between February 26, 2013 and January 31, 2014.
9. On October 9, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

A family receiving FS benefits must provide the agency their monthly household gross income at the time of application, and then every six months. *FoodShare Wisconsin Handbook (FSWH)* § 2.1.1.1. During the application process, a household member completes an application. *Id.* The application form asks for the household's gross income. *Id.* The household member also signs an application either electronically, telephonically, or manually certifying that the information provided is correct and accurate. *Id.*

The FS household must also verify their income at the time of application and every six months. *FoodShare Wisconsin Handbook (FSWH)* § 1.2.4. and 6.1.2. A FS recipient can verify income with an employment verification of earnings form provided the form is returned as complete and contains the employer's signature. *FSWH* § 1.2.4.2. Between these six month report periods a non-elderly, blind, or disabled household must only report when their income exceeds 130% of the federal poverty level (FPL). *FSWH* § 6.1.1.2. If a non-elderly, blind, or disabled household's income was over 130% of the FPL at the

application or six month report period, then the household does not have to report a change in income to the agency. *Id.*

The Federal regulations require States to establish a claim against any household that received an overissuance of FoodShare 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 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSWH)*, §7.3.2. Overpayments due to “client error” may be recovered for up to six years after discovery. *FSWH*, §7.3.2.1. Overpayments due to “agency error” may only be recovered for up to 12 months from the date of discovery. *Id.* The date of discovery is the date that the agency became aware of the potential overissuance. *Id.* This is synonymous with the date of awareness. *Id.* All adult household members are liable for the overpayment. *FSWH*, §7.3.1.2.

There are two overpayment periods in this case. The first overpayment period begins after the household’s July 2012 six month report form. The second overpayment occurred when the household reapplied in February 2013. The household also completed a second six month report form in August 2013. During each of these certification periods the household reported a monthly gross income that was significantly lower than the actual income. The petitioner’s wife’s employer mistakenly verified the incorrect reported amounts by failing to include the petitioner’s wife’s overtime wages. The family seems to have designated the petitioner’s wife as the person who completes and returns the forms, not the petitioner. However, all household members are liable for FS overpayments.

The petitioner argues that this was not intentional, and was a mistake. I believe that this was an oversight or mistake by the petitioner, and that neither he nor his wife intentionally deceived the agency. Their error should have been caught when the employer completed the employment verification of earnings form. Unfortunately, the employer made the same mistake they did, and failed to verify the overtime pay. The agency agrees. They allege that this overpayment was due to client error, not an intentional program violation. I agree with both the agency and the petitioner that this overpayment was caused by client error.

I considered the reporting requirements in this case. Generally a person who is at or above 130% FPL during a certification period has no requirement to report an increase in income to the agency over the next six months. This assumes that the person reported accurate information at certification. The issue in this case is that the household failed to report correct and accurate information on an application and six month report forms. Every time a person completes an application or six month report form the person certifies that the information provided is correct. It is the petitioner’s, not the employer’s responsibility, to report accurate information. The petitioner and his wife failed to do that, and thus I must conclude that the agency correctly established the overpayment.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was overpaid \$1,888 in FoodShare (FS) benefits for the period of July 1, 2012 to November 30, 2012, and February 26, 2013 to January 31, 2014 due to client error.

THEREFORE, it is

ORDERED

That this case 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 23rd day of November, 2015

\sCorinne Balter
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 November 23, 2015.

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