



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/169385

PRELIMINARY RECITALS

Pursuant to a petition filed October 13, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Wisconsin Department of Health Services, by the Milwaukee Enrollment Services agency, in regards to determinations that the petitioner had been overpaid FoodShare benefits (FS), a hearing was held on November 4, 2015, at Milwaukee, Wisconsin.

The issues for determination are: **(1) Whether the Department correctly determined that the petitioner was overpaid \$4,086 of FoodShare benefits in the period of April, 2014 – March, 2015; and (2) Whether the Department correctly determined that the petitioner was overpaid \$1,428 of FoodShare benefits in the period of April – July, 2015.**

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: , Overpayment Recovery Specialist  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County. He was receiving FS as the casehead of an assistance group in the period of April 1, 2014, through July 31, 2015. The household was composed of 3 persons from April 1, 2014, thorough October, 2014. It reduced to 2 persons in the November, 2014, FS budget, and remained at 2 persons through July 31, 2015.

2. On March 21, 2014, the petitioner reported a change in earnings, i.e., that his hours and wages were reduced from 80 hours per biweekly pay period to 50 hours per pay period. Verification was requested and the case was pended for that verification. See, Exhibit #1, at p. 12 (Case Comments for 3/21/14).
3. On March 24, 2014, the agency was informed that the petitioner's hours had been cut from 40 hours per week to 25 hours per week, as verified by a statement appearing to be from his employer, [REDACTED]. See, Exhibit #1, at p. 63; and at p. 12 (Case Comments for 3/27/14).
4. The agency adjusted the petitioner's FS budget on March 28, 2014, to reflect the newly reported and verified lower earnings and on March 28, 2014, issued additional auxiliary FS benefits to the petitioner of \$270 for the April, 2014, benefit month.
5. On or about June 24, 2014, the petitioner's employer submitted an Employer Verification of Earnings form again indicating that the petitioner was working 18 hours per week, at \$11.86 per hour. See, Exhibit #1, at p. 65.
6. On June 27, 2014, the petitioner submitted a six month report form (SMRF) online that reported no changes in earned income.
7. On June 27, 2014, another statement appearing to be from his employer, [REDACTED], was submitted asserting that the petitioner was working 18 hours per week, at \$11.86 per hour. See, Exhibit #1, at p. 66; and at p. 12 (Case Comments for 7/1/14).
8. On September 22, 2014, the petitioner submitted a change report online stating that his daughter, [REDACTED], had moved out of the FS household.
9. On September 24, 2014, the petitioner submitted a written statement to the county's child care unit indicating that [REDACTED] had moved out of his home. See, Exhibit #1, at p. 61; and at p. 12 (Case Comments for 9/24/14).
10. On January 29, 2015, another statement appearing to be from his employer, [REDACTED] LLC, was submitted asserting, dated January 27, 2015, and stating that the petitioner was working 18 hours per week, at \$11.86 per hour. See, Exhibit #1, at p. 67; and at p. 12 (Case Comments for 1/29/2015).
11. On or about June 10, 2015, the agency received a State Wage & Income Crossmatch (SWICA) report indicating that the petitioner's employers reported he had been paid \$8,777 in the 4th Quarter of 2014, when the agency had budgeted a total of \$2,561.76 for FS and MA benefits in at least that quarter of 2014 based upon the repeated reports of the petitioner, via change reports and received employer verification forms and letters, that he was working 18 hours per week at \$11.86 per hour.
12. The agency then referred the matter to the Public Integrity Unit as a possible overpayment case. On or about October 2, 2015, the overpayment unit procured a report from "The Work Number" of all of the petitioner's actual earnings from [REDACTED], d/b/a, [REDACTED], LLC, for the period of January 6, 2013, through October 2, 2015. See, Exhibit #1, at pp. 15 – 18.
13. On October 8, 2015, the agency issued two FoodShare Overpayment Notices to the petitioner, with attached worksheets demonstrating the computation of the overpayments. The first notice informed the petitioner that the agency had determined that he had been overpaid \$4,086 of FS in the period of April 1, 2014 through March 31, 2015, due to a misrepresentation of or failure to report earned income due to a client error. The second notice informed the petitioner that the agency had determined that he had been overpaid \$1,428 of FS in the period of April - July, 2015, due to a misrepresentation of or failure to report earned income due to a client error.
14. Subsequently, the agency also requested that the petitioner provide his actual paystubs from [REDACTED] LLC, and he did so for the period of March, 2014, through August, 2015, on or about October 13, 2015. See, Exhibit #1, at pp. 19 – 57.

15. The agency used the actual gross income from The Work Number report for the computations of both overpayments described in Finding of Fact No. 13, above. The actual gross income reported in the paystubs described in Finding of Fact No. 14 are identical to the gross income contained in The Work Number report described in Finding of Fact No. 13, and both are identical to the gross earned income utilized in the computations of both overpayments. See, Exhibit #1, pp. 16-17; pp. 19 – 57; and pp. 112-123.
16. On October 14, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the overpayment determinations described in Finding of Fact No. 13, above, and Exhibit #1, at pp. 112-123, on the basis that he did not provide the employer information that he was only working 18 hours per week, and that the overpayments subsequently found were not caused by him.

## DISCUSSION

### Background Discussion

The federal regulation concerning FoodShare overpayments requires the State agency to take action 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 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.*

### **(1) Whether the Department correctly determined that the petitioner was overpaid \$4,086 of FoodShare benefits in the period of April, 2014 – March, 2015.**

There is absolutely no question, based upon the uncontroverted Work Number actual gross wage data, which was specifically and fully corroborated by the petitioner’s own pay stubs, as well as generally corroborated by the SWICA crossmatch report, that the agency has correctly calculated the petitioner’s corrected FS budget on review in the overpayments. See, Findings of Fact Nos. 13 – 16; and see Exhibit #1, pp. 112-123; 16-17; and 19 – 57.

The only question is whether it was caused by agency error or client error. The former is only recoverable for one year retroactive from discovery in October, 2015, and the latter situation is recoverable for 6 years prior to discovery.

The petitioner testified, as did his friend, [REDACTED], that he does not know who sent in the reports from [REDACTED], LLC, that he was only working 18 hours per week. In effect, he asserts that he did not commit any error causing the overpayment, and that unknown persons at his employer or even persons not employed at his employer, filed false reports on March 24<sup>th</sup>, June 24<sup>th</sup>, and June 27<sup>th</sup>, 2014, and again on January 29<sup>th</sup>, 2015.

And yet, it is clear that the petitioner himself filed the initial March 21, 2014, change report that his work hours had reduced from 80 hours to 50 hours per bi-week. See, Exhibit #1, at p. 12, Case Comment for March 21, 2014. The agency then requested verification of the change, and the case was pended for the verification, and six days later, the agency actually received a hand written verification letter dated March 24, 2014, and an Employer Verification of Earnings statement dated March 25, 2014, both identifying the statements as from the petitioner’s employer [REDACTED], both identifying [REDACTED] as the employee of the concern, and both stating that he was working 18 hours per week at \$11.86 per hour. I find that testimony by [REDACTED] and [REDACTED] to be self-serving, evasive, uncorroborated by any other documentary or parol evidence, contradicted by the Case Comments for March 21, 2014, and the

employer report documents of the four dates listed above (see, Exhibit #1, at pp. 63-67), contradicted by the simple fact that the petitioners' income never dropped below 75 hours per biweekly period until nearly a year after the March 21, 2014, wage reduction change report of the petitioner (See, Exhibit #1, at pp. 16-17, and wholly incredible. I did not fall off the turnip truck yesterday. The petitioner did not accurately report his earned income, receiving far more in monthly income than was being budgeted in the period of April, 2014 – March, 2015.

Under this fact pattern, the Department has produced evidence far, far in excess of the preponderance of the evidence standard demonstrating that the petitioner was overpaid \$4,086 of FoodShare benefits in the test period due to a client error in underreporting his income for a prolonged period of time. This overpayment determination must be sustained.

**(2) Whether the Department correctly determined that the petitioner was overpaid \$1,428 of FoodShare benefits in the period of April – July, 2015.**

As to the second FS overissuance claim, it matters not whether it is agency error or client error. As it falls within less than a year prior to discovery in October, 2015, it must be recovered. And in any event, it remains clear, as stated in the discussion of issue #1, above, that the agency has fully and correctly budgeted the accurate corrected earned income in the computations for this second overpayment, and the petitioner has not only not contradicted the budget, but corroborated it. See, Findings of Fact Nos. 13 – 16; and see Exhibit #1, pp. 112-123; 16-17; and 19 – 57.

For the same reasons as discussed in issue #1, I find the petitioner and [REDACTED] to be not credible on the asserted partial defense that he did not report the lower income the agency used. I conclude that he did, and did so repeatedly. This client error caused the overpayment of FS in the period of April-July, 2015, too. The Department's action in finding he was overpaid \$1,428 of FS in this period must also be sustained on the preponderance of the evidence in this record.

**CONCLUSIONS OF LAW**

That the Department correctly determined that the petitioner was overpaid \$4,086 of FoodShare benefits in the period of April, 2014 – March, 2015 (FS Claim No. [REDACTED]); and \$1,428 of FoodShare benefits in the period of April – July, 2015 (FS Claim No. [REDACTED]); both due to client errors.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be, and the same hereby 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 20th day of November, 2015

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\sKenneth D. Duren, Assistant Administrator  
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 20, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability