



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/169473

PRELIMINARY RECITALS

Pursuant to a petition filed October 16, 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 November 12, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$96 for the period of April 1, 2013 – September 30, 2013 due to failure to report earned income.

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 # ) is a resident of Racine County.

2. On or about March 11, 2013, the Petitioner submitted a Six Month Report Form (SMRF) to the agency. She reported no changes in her employment with [REDACTED], 40 hours/week at \$13/hour.
3. On March 14, 2013 and July 16, 2013, the agency issued Notices of Decision to the Petitioner informing her that her FS benefits would remain the same at \$16/month. The notice also informed her that if her household’s monthly gross income exceeded \$2,391.13, she must report it to the agency by the 10th day of the next month.
4. On June 12, 2013 and September 4, 2013, the agency received wage discrepancy alerts.
5. On September 17, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end effective October 1, 2013 due to failure to provide requested information.
6. In September, 2015, the agency received earnings verification from [REDACTED] demonstrating the Petitioner’s actual gross wage information as follows:

December, 2012	\$2,657.20	January, 2013	\$3,165.75
February, 2013	\$3,713.95	March, 2013	\$3,608.36
April, 2013	\$3,221.96	May, 2013	\$4,364.52
June, 2013	\$3,314.38	July, 2013	\$4,275.04
August, 2013	\$4,624.70	Sept., 2013	\$3,708.82
7. On September 23, 2015, the agency issued a FoodShare Overpayment Notice and worksheet to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$96 for the period of April 1, 2013 – September 30, 2013 due to the Petitioner’s failure to report earned income.
8. On October 16, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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.

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 Petitioner did not accurately report her earned income when she completed her SMRF in March, 2013. Specifically, she did not report that she works more than 40 hours/week and that she receives overtime pay and shift differential pay. She received notices from the agency regarding how her household income was calculated. She did not advise the agency that her actual gross wages exceeded what she reported in the March SMRF.

I reviewed the agency’s evidence. In each month of the overpayment, the actual wage verification from the Petitioner’s employer demonstrates that her income exceeded the amount she reported during her

renewal and also exceeded the reporting requirement. Based on the evidence, I conclude the agency properly seeks to recover an overissuance of FS benefits in the amount of \$96 for the period of April 1, 2013 – September 30, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits in the amount of \$96 for the period of April 1, 2013 – September 30, 2013.

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 8th day of December, 2015

\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 December 8, 2015.

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