



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/169658

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on November 17, 2015, at Janesville, Wisconsin.

The issue for determination is whether petitioner is liable for a \$5,944 FS overpayment.

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: [Redacted]

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Rock County.
2. Petitioner was a case head for a FS case in 2013, 2014, and 2015.
3. The agency issued a FS overpayment notice on 10/6/15 for the amount of \$496 from 6/1/13 to 7/31/13 in claim number [Redacted].

4. The agency issued a FS overpayment notice on 10/6/15 for the amount of \$238 from 1/1/14 to 1/1/15 in claim number [REDACTED].
5. The agency issued a FS overpayment notice on 10/6/15 for the amount of \$238 from 1/1/14 to 1/31/14 in claim number [REDACTED].
6. The agency issued a FS overpayment notice on 10/6/15 for the amount of \$5,210 from 2/1/14 to 1/31/15 in claim number [REDACTED].
7. Petitioner filed a request for hearing.

### DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

An FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook, App. 8.1.1.1. 130% of poverty was \$3,529 for a household of six.

The Department's case is premised upon the state wage match record which is wage information provided to the state by employers. The state also cites the monthly wage information for April 2013 through February 2015 reported to the agency by [REDACTED], the employer for [REDACTED]. The agency also provides data from The Work Number which has been found to be generally reliable and accurate. The documents from The Work Number reflect paycheck gross wage data from [REDACTED] which employed petitioner in 2013, 2014, and 2015.

The Department argues that the state wage match record and the information provided by the employers show that the household income was so high during the months of the overpayment claims as to make the family either ineligible for any FS allotment per FSH 8.1.2, or entitled to only a portion of what was paid.

At hearing, petitioner stated that she sometimes would work extra hours around the holidays. She stated that she asked the agency about working some extra hours and the agency advised her that only an infrequent increase in pay need not be reported. But, the income for the household was consistently over the reporting limit over and over again and for extended periods. At times it was almost three times the reporting limit and \$3,000 higher than the gross income limit to even be eligible for FoodShare. This was not a mistake or a one-time occurrence that was overlooked. This was a flagrant pattern of failure to inform the agency of the household income. Additionally, petitioner did not dispute the calculations or the income data admitted as evidence. The overpayment is clear.

**CONCLUSIONS OF LAW**

The Department did not err in determining the \$5,944 overissuance.

**THEREFORE, it is ORDERED**

That this 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 8th day of December, 2015

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\sJohn P. Tedesco  
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.

Rock County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability