



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/169814

PRELIMINARY RECITALS

Pursuant to a petition filed November 2, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by Brown County Human Services to recover FoodShare benefits (FS), a hearing was held on November 18, 2015, by telephone.

The issue for determination is whether petitioner failed to report increased income resulting in an overpayment.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Brown County. She received FS and BadgerCare Plus (BC+) MA during the period in question.
2. Petitioner completed a six-month review in April and May, 2014. Her employer filed a verification form reporting that petitioner was working eight hours per week at \$10.87 per hour. On June 16, 2014 the county notified petitioner that benefits would continue with no changes, but

she needed to report a change in income if income rose above \$1,310.83. At the time the county was budgeting \$373.93 as monthly earned income.

3. Petitioner actually was working substantial overtime/extra hours. Her income was above \$1,310.83 in July, 2014, and it continued to be above that level every month thereafter.
4. Had petitioner reported her income correctly she would have been ineligible for FS for all of September, 2014 through March, 2015, and would have been eligible for just \$16 FS in April, 2015.
5. The county discovered the increased income through a state wage match in the spring, 2015. By a notice dated October 9, 2015 the county informed petitioner that she was overpaid \$1,388 in FS from September, 2014 through April, 2015, claim no. 3900447063.

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).

It is clear that petitioner's income was much higher than she reported or that the employer verified. It is the recipient's duty to report accurate income; if the employer verifies income incorrectly it still is the recipient's duty to correct the error.

Petitioner testified that she did not report the extra hours because she never knew when she would be called for them. However, the June, 2014 notice told her to report if her income in a month rose above \$1,310.83. It did not tell her to guess whether her income might be lower in future months. The simple result is that petitioner's FS were determined using income much lower than petitioner actually earned. The county correctly determined the FS overpayment.

CONCLUSIONS OF LAW

The county correctly determined an FS overpayment that occurred after petitioner failed to report that her earned income was substantially higher than the amount being budgeted.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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 23rd day of November, 2015

\sBrian C. Schneider
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.

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