



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed November 9, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on December 8, 2015, by telephone.

The issue for determination is whether petitioner was overpaid FS because she did not report increased income.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner resides with her daughter. In August, 2014, petitioner reported a decrease in income from her job at [REDACTED]. The change was verified. By a notice dated August 25, 2014, the agency informed petitioner that FS would increase to \$201 on September 1, 2014 based upon \$1,293 monthly income. The notice informed petitioner to report if her income increased in a month to more than \$1,310.

- [REDACTED]
3. On September 8, 2014, the agency sent another notice regarding FS. That notice told petitioner that FS would increase to \$216 in October, and that she should report if monthly income rose above \$1,705.
 4. Petitioner's hours increased in September, 2014, and her gross income that month rose to \$1,792.78. She did not report the increase.
 5. On November 21, 2014 petitioner completed a renewal. She reported no change in income, and her employer verified that she was working 20-30 hours per week at \$10.10 per hour. FS increased to \$289 per month beginning January 1, 2015 based upon \$1,085 monthly income.
 6. Petitioner actually was being paid for 40-45 hours per week during the entire period. Her monthly income from November, 2014 through March, 2015 regularly was over \$1,700.
 7. On March 24, 2015 petitioner reported that her employment at [REDACTED] ended. By a notice dated March 25, 2015, the agency informed petitioner that BC+ would continue in April with no premium based upon zero income. She needed to report if income rose above \$1,327.
 8. Petitioner actually just switched jobs in March. She started working at [REDACTED] March 9, 2015, and income from there always exceeded \$2,000 per month. Petitioner reported the job to the Wisconsin Works (W-2) agency, but not to the economic support agency. The W-2 agency also did not report the job to economic support. Verification of the job was received at the economic support agency on April 15, 2015, however.
 9. The agency discovered the higher income in June, 2015, and FS for petitioner ended July 1, 2015. The agency eventually determined that petitioner was overpaid FS beginning November 1, 2014 through June 30, 2015. The agency compared the FS petitioner would have received using actual income versus the amount she received.
 10. By a notice dated October 16, 2015, the agency informed petitioner that she was overpaid \$1,861 from November, 2014 through June, 2015, due to client error for failing to report increased income, claim no. [REDACTED].

DISCUSSION

Under current policy an FS household must report an increase in income if monthly gross income in a month exceeds 130% of the Federal Poverty Level (FPL). FS Handbook, Appendix 6.1.1.2. That amount for a two-person household was \$1,705 in September, 2014. Petitioner's income rose above that amount in September, 2014, and she failed to report the increase.

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).

In this case the overpayments for November, 2014 through March, 2015 were determined correctly. Petitioner's income rose above the reporting threshold in September, 2014, and she did not report the increase. Petitioner testified that she had vacation and personal hours included in her pay checks. The notices did not tell her to estimate her actual work hours versus other hours. It told her to report if income rose above specific amounts.

[REDACTED]

In March, 2015, petitioner reported the end of the [REDACTED] job. The economic support agency did not receive information about her new job, but it is clear that she reported it to the W-2 agency. Verification of it was provided, and I note a March 27 case note regarding child care assistance confirming that petitioner is working and authorizing child care. Thus any FS overpayment for April and May was due to agency error because the agency failed to take note of the new job despite petitioner reporting it to W-2 and the child care agency.

That is important because if the overpayment was due to agency error, petitioner should receive the full earned income deduction. If the error is due to client error of not reporting income, the agency does not allow the earned income deduction in the overpayment determination. 7 C.F.R. §273.18(c)(1)(ii)(B); Handbook, App. 7.3.2.1. The deduction is allowed in cases of agency error. When the agency did the overpayment calculations for April and May no earned income deduction was allowed. Because of this finding there should be an earned income deduction for those months.

I recalculated the overpayments for April and May using the earned income deductions. For both months the household would have been eligible for \$16 FS, based upon net income of slightly more than \$1,220 each month. See Handbook, App. 8.1.2 for the allotment table. Thus I will order the overpayment reduced by \$32.

June, 2015 remains overpaid as originally determined. I fail to see how petitioner could have received the March 25, 2015 notice that budgeted zero income and not realized that an error was made. That notice told petitioner to report if income went above \$1,327.50. Income was above that level right away in April, so at very least petitioner should have reported that her income was over that level by May 10, 2015. Thus the June overpayment remains as calculated.

CONCLUSIONS OF LAW

1. Petitioner was overpaid FS as calculated by the agency in November, 2014 through March, 2015, and June, 2015, because she failed to report when her income was higher than the mandatory income reporting threshold.
2. Petitioner also was overpaid FS in April and May, 2015 but due to agency error, and thus she should have received the 20% earned income deduction in the calculation.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to change overpayment claim no. [REDACTED] to be \$1,829 for the months of November, 2014 through June, 2015, with April and May, 2015 being reclassified as agency error. The agency shall take the action within 10 days of this decision. In all other respects the petition for review 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

[REDACTED]

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.

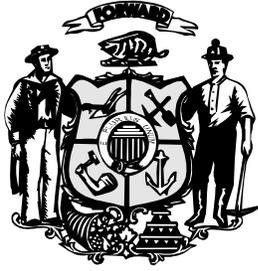
APPEAL TO COURT

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 16th day of December, 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 December 16, 2015.

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