



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/170188

PRELIMINARY RECITALS

Pursuant to a petition filed November 16, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on December 09, 2015, at Green Bay, Wisconsin.

The issue for determination is whether the respondent is correctly seeking recovery of FS overpayments to the petitioner during the period of September, 2013, through January, 2014, due to failure to report correct shelter costs resulting in inaccurate shelter deductions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: [Redacted]

Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Brown County who received FS benefits during the period of September, 2013, through January, 2014.

2. The county agency calculated petitioner's FS benefits based upon petitioner's reporting of paying monthly rent during the overpayment period.
3. The petitioner failed to report her lack of a rental obligation to the respondent.
4. The respondent determined that petitioner was overpaid \$511.00 in FS benefits during the period of September, 2013, through January, 2014, due to the failure to notify the respondent of her lack of a monthly rental obligation.

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, 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.*

The petitioner does not dispute the respondent's specific calculations, but instead argues that she never intentionally withheld information regarding her rental obligations. Still, as noted above, recovery of FS overpayments is required regardless of who is at fault or whether or not the error was intentional.

The petitioner also noted that she paid Child Support through March of 2015. At hearing the respondent was unable to determine whether or not Child Support was included in her budget. I note that no FS budgets, overpayment notices, or overpayment worksheets were submitted as exhibits at hearing, which may have provided such information. While it is uncertain whether or not Child Support budgeting would affect the established overpayment, I will remand this matter to the respondent to review petitioner's Child Support payment claims to verify whether or not this was budgeted correctly, and whether this would impact the overpayment.

CONCLUSIONS OF LAW

The amount of the overpayment is indeterminable as the respondent was unable to establish at hearing that it had correctly budgeted petitioner's Child Support payments.

NOW, THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent to review petitioner's FS budgeting to determine whether petitioner's Child Support payments were correctly budgeted, and whether such budgeting of Child Support would impact the alleged overpayment determination.

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 29th day of December, 2015

\sPeter McCombs
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 29, 2015.

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