



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/170260

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Lafayette County Dept. of Human Services to reduce and to recover FoodShare benefits (FS), a hearing was held on December 16, 2015, by telephone.

The issues for determination are whether the county correctly determined an FS overpayment resulting from a failure to report income and whether the county correctly determined household income after a September, 2015 review.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Lafayette County Dept. of Human Services
627 Main Street
Darlington, WI 53530

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Lafayette County.
2. Petitioner received FS in 2014 and 2015 for a three-person household. Petitioner and her husband operate a farm as their primary employment; petitioner's husband also does car restoration. Petitioner also began to work at [Redacted] in July, 2014, initially making between \$250 and \$570 per month.

3. Petitioner filed a six-month report on September 4, 2014. She did not report the [REDACTED] income. She also failed to report the [REDACTED] income in a March, 2015 review and a September, 2015 six-month report.
4. From October, 2014 through March, 2015 the county budgeted zero earned income for FS purposes. The household received maximum FS of \$511 during that period.
5. Petitioner had a review in March, 2015. The county used the couple's 2013 self-employment tax forms to determine ongoing benefits because the 2014 tax returns were not yet complete. The 2013 taxes showed a monthly self-employment income for FS purposes of \$1,220.27. FS were reduced to \$310 effective April 1, 2015.
6. On September 10, 2015 petitioner filed a six-month report form for FoodShare purposes. At that point the county worker requested a copy of the 2014 self-employment income tax return; the tax return was received by the county on October 5.
7. While processing the September, 2014 six-month report the worker discovered the [REDACTED] job through a state match.
8. The worker obtained petitioner's actual income from [REDACTED], and she recalculated FS as if the income were reported accurately. By two notices dated October 6, 2015, the county informed petitioner, her husband, and their adult son that the household was overpaid a total of \$1,591 in FS from October 1, 2014 through September 30, 2015, claim nos. [REDACTED] and [REDACTED].
9. Effective October 1, 2015 petitioner's FS were reduced to \$73, based upon the self-employment income from the 2014 tax return and \$990 monthly income from [REDACTED]. Effective November 1, 2015 FS were reduced to \$16 because petitioner's son reported that he moved out, thus reducing the household size to two.

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).

I first want to point out a major difference between counting self-employment income for FS as opposed to Medical Assistance under the BadgerCare Plus (BC+) program. As of April 1, 2014, BC+ budgeted self-employment income based totally on net income shown on self-employment tax returns. There is no add-in of depreciation. FS still uses the depreciation add-in, so monthly income is determined by taking net business income from the tax return, adding depreciation, and then dividing by twelve. See 7 C.F.R. §273.11(a)(2) and (4). I note this to explain why the self-employment income is so much higher in the FS calculations than in concurrent BC+ calculations.

In this case the worker obtained petitioner's income from [REDACTED] and re-determined FS based upon that income. Since petitioner should have reported the job on her September, 2014 six-month report, the worker started with October, 2014 FS. No changes in the FS amount were made until March, 2015, but beginning with March every month was overpaid.

I conclude that the overpayment from April through September, 2015 was calculated correctly. That is all of claim no. [REDACTED] in the amount of \$1,237. There is a case note that petitioner's son started working in May, 2015, and that job also was not reported. However, even if that income was added the household likely would have been eligible for the \$16 calculated in the overpayment for the months of July through September, so I will uphold the overpayments for those months as calculated. As noted, actual income from [REDACTED] was used along with the self-employment income, and thus the calculations for April through September are upheld.

I am reversing the overpayment for March, 2015, which is claim no. [REDACTED] for \$354. Petitioner's review was done in March, and the 2013 tax return was entered into the system. The overpayment calculation includes the 2013 self-employment for March FS, but that income should not have been entered until April benefits. If the self-employment is removed there is no overpayment for March.

Petitioner also appealed the reduction of FS after the [REDACTED] income was added. First, I reviewed the determination of the self-employment income, and I find that the county followed the FS policy correctly in determining the monthly self-employment income. It was noted that a large part of the 2014 income came from the sale of business equipment as reported on IRS Form 4797, and it is unlikely that there will be a similar sale in 2015. However, the FS Handbook, App. 4.3.3.5.3 specifically includes income from Form 4797 as countable, and thus it cannot be excluded. Petitioner also complained that the [REDACTED] income was too high; as noted in the concurrent Medical Assistance decision, for November the agency already has reduced [REDACTED] income to the level petitioner usually earns, so it appears that the calculations are correct. The big change for November is the reduction of the household size.

CONCLUSIONS OF LAW

1. Petitioner was not overpaid FS in March, 2015 because the overpayment calculation included self-employment income that was not entered into petitioner's case until mid-March, 2015, and thus it should not be counted until April, 2015 FS.
2. Petitioner was overpaid \$1,237 in FS from April through September, 2015 because she did not report income from her employment at [REDACTED].
3. The county correctly determined household income in calculating FS for October and November, 2015.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind overpayment claim no. [REDACTED] for \$354 and to cease recovery of it. In all other respects 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 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 23, 2015.

Lafayette County Department of Human Services
Division of Health Care Access and Accountability