



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/168918

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on December 10, 2015, at Racine, Wisconsin. The matter was rescheduled twice at petitioner's request.

The issue for determination is whether the agency has met its burden to establish that it correctly calculated an overpayment of FS against the petitioner for the period of August 2012-October 2012 in the amount of \$786 (claim # [redacted]).

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: Jelena Jones

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Racine County.
2. She received FS in Wisconsin from at least August 2012-October 2012.

3. The petitioner was employed with [REDACTED] from at least January 2012 - December 2012. See Exhibit 2.
4. In March 2015 the agency became aware of the wage discrepancies used in petitioner's case through an alert from the State Wage Income Collection Agency (SWICA). It thereafter received verifications of petitioner's wages January 2012 - December 2012 from her employer.
5. On August 11, 2015 the agency issued a notice of FS overpayment to the petitioner stating that it calculated an overpayment of FS against the petitioner for the period of August 2012-October 2012 in the amount of \$786.

### 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 or even if the client error was unintentional. 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, §7.3.1.2 (Release #12-01; the version in effect at that time). 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).

Under FS rules, an FS household needs to report increased income when the new income causes total household income to rise above 130% of the federal poverty level (FPL). FS Handbook, §6.1.1.2. 130% of the FPL for a 3-person household in 2012 was \$2008.

According to the evidence, the petitioner's income exceeded 130% of the FPL in June 2012. This then had to be reported by July, which would then have reduced or discontinued Petitioner's FoodShare benefits for August. Petitioner did not dispute the income the agency used and I find no error in the calculations. Even if the petitioner had timely reported her increased income and the agency failed to budget it correctly, there would still be an overpayment against the petitioner because the overpayment laws do not care who caused the incorrect benefits to be issued. As such, I must find that the agency met its burden to show that an overpayment exists. I find no exception to this.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

The petitioner may wish to contact the Public Assistance Collection Unit (PACU), which is responsible for collecting overpayments of public assistance benefits, to see if she can set up a reasonable repayment plan and avoid tax intercept. The PACU can be reached at P.O. Box 8938, Madison, WI 53708-8938 by mail, Phone 1-800-943-9499, Fax: (608) 266-8302, email: [dwspace@dwd.state.wi.us](mailto:dwspace@dwd.state.wi.us), and online at <http://www.dcf.wisconsin.gov/pacu/>. If she is still receiving FS, her overpayment may be recouped through current FS benefits.

### CONCLUSIONS OF LAW

The agency has met its burden to establish that it correctly calculated an overpayment of FS against the petitioner for the period of August 2012-October 2012 in the amount of \$786 (claim # [REDACTED]).

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be 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 Milwaukee,  
Wisconsin, this 6th day of January, 2016

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\sKelly Cochrane  
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 January 6, 2016.

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