



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/170344

PRELIMINARY RECITALS

Pursuant to a petition filed November 23, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Rock County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on January 13, 2016, by telephone. A hearing set for December 16, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether an overpayment resulted from client or agency error.

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: [Redacted]
Rock County Dept. of Social Services
P.O. Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Rock County.
2. Petitioner received FS in 2013. By a notice dated October 14, 2015, the county informed petitioner that he was overpaid \$510 in FS from August 1 through October 31, 2013 because he failed to report an increase in income, claim no. [Redacted].
3. Prior to the hearing the county worker discovered that the original worker budgeted petitioner's reported income incorrectly, and as a result the error should have been attributed to the agency.

## 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). If the error was due to the failure to report increased income, the agency shall not allow the earned income deduction for the unreported income in the overpayment calculations, but if the error was agency error the earned income deduction should be allowed. 7 C.F.R. §273.18(c)(1)(ii)(B).

In this case it is evident that petitioner's income was under-budgeted in the months in question. However, when the calculation was done by the county it would not have included the earned income deduction. Since it is now agreed that the initial error was by the county worker, the overpayment should be recalculated with the deduction allowed.

I will order the county to do the recalculation. If petitioner disagrees with the result he is entitled to file a new appeal of the recalculation.

## CONCLUSIONS OF LAW

An overpayment issued to petitioner was due to agency, not client, error.

**THEREFORE, it is**

### ORDERED

That the matter be remanded to the county with instructions to re-determine the amount of an FS overpayment issued to petitioner in claim no. [REDACTED] by allowing the earned income deduction for income not originally budgeted. The county shall do so, and shall inform petitioner of the new claim amount, within 10 days of this decision.

## **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 14th day of January, 2016

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\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 January 14, 2016.

Rock County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability