



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/171816

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 1, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by Brown County Human Services to recover FoodShare benefits (FS), a hearing was held on February 24, 2016, at Green Bay, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the county correctly determined FS overpayments.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

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

By: [REDACTED]  
Brown County Human Services  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County. He resides with his wife and their three children.
2. The household applied for FS on April 10, 2013. The county requested petitioner's pay stubs from the last month. Petitioner provided pay stubs dated February 28, March 7, March 14, March 21, and March 28. FS were determined based upon the average from those stubs.
3. A review was done in April, 2014. Petitioner provided his pay stubs from February 27, March 6, March 13, and March 20. FS were determined based upon the average of those stubs.

4. The county received a wage match showing discrepancies in the income reported and received. The county discovered that in both March, 2013 and March, 2014 petitioner received an extra pay check for a bonus. The extra pay stub was not included in the stubs given to the county. Had the bonus money been reported it would have been divided by twelve months with one-twelfth added to each month's income.
5. In November, 2013 household income went over the reporting threshold. The increased income would have affected January, 2014 FS and the months thereafter. Petitioner did not report the increased income.
6. After obtaining actual income figures, the county determined that the household was overpaid \$342 in FS from April 11, 2013 through December 31, 2013, claim no. [REDACTED] and \$1,720 from January 1 through October 31, 2014, claim no. [REDACTED]. See Exhibit 5 for the calculations.

### 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). While normally there is a 20% earned income disregard, the disregard is not given for any earned income that should have been reported but was not. 7 C.F.R. §273.18(c)(1)(ii)(B); Handbook, App. 7.3.2.1.

I have reviewed the calculations in this case. The 2013 bonus income amounted to \$88.25 per month, resulting in \$40 overpayments for full months' FS. The 2014 bonus had a similar impact. The largest part of the claim was for January through April, 2014. The county budgeted \$2,151 in monthly earned income, but actual earned income was \$3,236. The household would have been ineligible for FS those four months.

Petitioner's wife testified that she provided all pay stubs to the county worker, and thus it must have been the worker's fault that the bonus was not budgeted. As noted above, an overpayment must be recovered even if caused by agency error, but it is not comprehensible that a worker would simply omit proffered pay stubs, twice. It is much more likely that petitioner's wife left out the bonus stub thinking that the county wanted only regular income.

Petitioner's wife testified that she did not remember being told that she had to report increased income. I reviewed the notice history and found three notices issued in April, September, and October, 2013 that informed the household that they had to report if monthly household income rose above \$2,900. The misunderstanding of the reporting requirement was an error, but the misunderstanding is not a basis for overturning the claim.

### CONCLUSIONS OF LAW

The county correctly determined FS overpayments during the period April, 2013 through October, 2014.

**THEREFORE, it is**

**ORDERED**

That 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 1st day of March, 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 March 1, 2016.

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