



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/171922

PRELIMINARY RECITALS

Pursuant to a petition filed February 05, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 15, 2016, at Sparta, Wisconsin.

The issue for determination is whether the agency met its burden to establish that it correctly seeks recoupment of a \$3,099 FS overpayment.

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:

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Monroe County.

2. Petitioner's husband is a school teacher. The agency erred when granting FS and counted only half of his income. This resulted in an underestimation of income. Any related FS overpayment to petitioner was the result of agency error.
3. The agency discovered this error and overpayment on 1/14/16.
4. The agency issued a FS overpayment notice on 2/1/16 for the amount of \$3,893 for the period from 10/1/14 to 9/30/15.
5. Petitioner filed a request for hearing on 2/8/16.
6. The agency subsequently realized that it committed another error in determining the overpayment amount as agency error can only be sought back 12 months from the date of discovery. The agency therefore issued a positive notice on 3/14/16, just prior to the hearing, indicating that the new amount sought was \$3,099 for the period from 1/1/15 to 9/30/15.

### 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.*

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

During the hearing, petitioner did not dispute the agency error or that she was overissued FS. Petitioner simply argued that to now seek recovery of the non-client overpayment is unfair because the FS overpayment was not petitioner's fault, as it was caused entirely by agency error. Related to this argument is her assertion that she attempted to inform the agency that she believed she was getting more FS than she was due. The petitioner's contention is understandable. The petitioner also explained that it will be a financial hardship to repay the FS overpayments. However, since the January 2015 to September 2015 FS overpayment was created during the 12-month period, controlling federal regulation requires establishment of a claim against a household for a FS overpayment **regardless of whose error caused the overpayment to occur**: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . . "7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, 7.3.2.1. Accordingly, for the above reasons, the county agency is correctly seeking recovery of the FoodShare overpayment.

Petitioner also argued that the agency's calculation of household income was incorrect. I agree. She asserts that the agency counted more than the amount of income the family actually received in some of the pertinent months. The answer to why this occurred, as discussed at hearing, is that when a household is paid earned income on a bi-weekly basis, the FS program is required to multiply by 2.15 to get a monthly amount to account for extra days each month and to avoid large fluctuations in 3-paycheck months. But, this is a recoupment case, not one in which we are prospectively budgeting a household's likely income. The agency is able to go back and look at pay stubs and determine exactly what income was earned during the specific months of the overpayment. There is no need to use a multiplier. The

agency should look at the actual income and determine the actual allotment due in determining whether there was an overpayment and any amount.

### CONCLUSIONS OF LAW

1. The agency is correct that it must determine whether an overpayment occurred and seek recovery regardless of fault.
2. The county agency erred in its calculation of the overpayment as the agency used a multiplier in each overpayment month in calculating the overpayment. The use of the multiplier overstated the household income for each month.

**THEREFORE, it is**

### ORDERED

That the matter is remanded to the county agency with instructions to redetermine liability for a FS overpayment in the months of January 2015 to September 2015 and to recalculate any overpayment using the **actual** household income in each month without averaging or multiplying by 2.15. New notice must be sent to petitioner. These actions must be completed 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 17th day of March, 2016

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\sJohn P. Tedesco  
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 17, 2016.

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