



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/172066

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by the Dane County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on March 22, 2016, at Madison, Wisconsin, with the ALJ appearing by telephone.

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

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. In 2014 petitioner received FS for herself and her daughter. FS were based on her income from jobs at [Redacted] and [Redacted].
3. Petitioner had a review in April, 2014. Petitioner reported no changes in those two jobs (she did report the end of a third job that does not affect this decision) and FS continued at \$199 monthly based upon the income from the two jobs.

4. In May, 2014 petitioner reported that the [REDACTED] job ended April 24, 2014. After getting verification the county removed the [REDACTED] income from petitioner's case.
5. By a notice dated May 20, 2014 the county informed petitioner that FS would be \$347 monthly based upon \$947 monthly income from [REDACTED]. The notice informed petitioner that she needed to report if income in a month exceeded \$1,649.17. FS continued at that income through November, 2014; FS increased to \$357 effective October 1, 2014 due to a cost of living increase.
6. In April, 2014 petitioner started a second job with the same employer that ran [REDACTED]. However, although the jobs were interchangeable, the new employer was a different entity called [REDACTED]. Petitioner was paid separately by the two entities. She already had started the [REDACTED] job when she completed her April, 2014 review.
7. In May and June, 2014 petitioner's actual income from employment totaled \$2,678. In July through September her income was \$1,964, and in October and November it was \$1,767.
8. After discovering the discrepancies the county determined that petitioner was overpaid FS from May through November, 2014. Using correct income and comparing it to the amount budgeted each month, the county determined that petitioner was overpaid \$1,682 in FS, claim no. [REDACTED]. The county notified petitioner of the claim by a letter dated February 4, 2016. See Exhibit 7.

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).

The county established in the hearing that petitioner received more FS than she should have received in 2014 because she failed to report her increased income from [REDACTED]. Petitioner testified that she did not think of [REDACTED] as a different employer because the jobs were interchangeable. The problem is that when petitioner signed her review on April 23, 2014, she already started the [REDACTED] position and would work her last day at [REDACTED] the next day. Then when she reported the end of the [REDACTED] job she did not report increased income from the other job.

The FS rules require that a person report increased income, and the May 20 notice told petitioner that she should report if income increased above \$1,649. An earlier notice dated April 30 told petitioner that she needed to report if income increased to be over \$1,743.40. See Exhibit 2, page 6. Petitioner's income already was over that amount in April, and it continued to be over that amount thereafter. See Exhibit 5, page 1. Therefore, even if petitioner thought that the [REDACTED] and [REDACTED] jobs were essentially the same job, she still should have reported the increased income.

I conclude that the county correctly determined the FS overpayment in this case. Petitioner stated that she did not know how she could repay the overpayment, but the only issue before this office is whether the overpayment was determined correctly. Repayment is handled through the county agency and the Public Assistance Collection Unit.

CONCLUSIONS OF LAW

Petitioner was overpaid \$1,682 in FS from May through November, 2014 because she failed to report increased income.

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 25th day of March, 2016

\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 25, 2016.

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