



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/172144

PRELIMINARY RECITALS

Pursuant to a petition filed February 17, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Jefferson County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 22, 2016, at Jefferson, Wisconsin.

The issue for determination is whether petitioner is liable for an overpayment of FS benefits.

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: [Redacted]
Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Jefferson County.
2. Petitioner received FS benefits as part of a five-member household.
3. Respondent received state wage match information which indicated that petitioner's household income was higher than the respondent had budgeted.

4. The respondent requested earnings verifications from the petitioner; when those were not timely received, the respondent calculated an overpayment of benefits (claim # [REDACTED]) in the amount of \$1260.00 based upon average wages identified by the state wage match.
5. The respondent determined that petitioner's household income exceeded program limits in at least December, 2014, and continued to exceed limits through March, 2015.
6. On March 4, 2015, the respondent received forms back from petitioner's employer, [REDACTED], as well as the employer of [REDACTED], [REDACTED].
7. Based upon receipt of actual wages, the respondent revised FS overpayment claim # [REDACTED] to \$1157.
8. Petitioner appealed liability for the FS overpayment by filing a Request for Fair Hearing on February 17, 2016.

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 respondent has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

The evidence in this record demonstrates that the agency at first determined the overpayment based upon average wages when petitioner did not timely verify her household earnings. Subsequently, the respondent received the requested wage information and recalculated the alleged overpayment based upon actual earnings. The petitioner indicated at hearing that she is not specifically disputing any calculations.

Instead, she contends that she did timely notify the respondent of the change in household income, and the respondent failed to act upon that. She credibly testified that the income change information was faxed to the respondent on September 4, 2014. The respondent was unable to confirm or deny that a fax was received from the petitioner on that date.

I have reviewed the re-calculations, and I observe no error. While I conclude that the respondent has failed to overcome the petitioner's assertion that the debt here arises from agency error, as opposed to client error, the fact remains that the respondent is required to recoup all FS overpayments, regardless of fault. As such, the petitioner remains liable for the overpayment, even where the debt arose due to a failure by the respondent.

Based upon the record before me, I can only conclude that the county agency correctly determined the petitioner was overpaid \$1,157.00 in FS from December, 2014, through March, 2015, due to an error in budgeting petitioner's household's earned income. The respondent's overpayment, as amended, must be sustained.

CONCLUSIONS OF LAW

That the county agency correctly determined in FS overissuance Claim No. [REDACTED], as amended, that the petitioner was overpaid \$1,157.00 of FS from December 1, 2014, through March 31, 2015.

THEREFORE, it is ORDERED

That the petition for review herein be, and the same hereby is, 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 15th day of April, 2016

\sPeter McCombs
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 April 15, 2016.

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