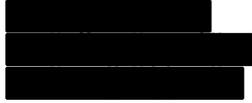




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/173798

PRELIMINARY RECITALS

Pursuant to a petition filed April 19, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by the La Crosse County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on May 20, 2016, at La Crosse, Wisconsin, with the parties appearing by telephone. A hearing set for May 19, 2016 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined on FS overpayment.

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: [Redacted]
La Crosse County Dept. of Human Services
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of La Crosse County.
2. In 2012 petitioner received FS as the case head of a three-person FS household. A review was done in January, 2012. Based on the check stubs provided monthly income was determined to be \$1,681.82 earned income plus \$307 unemployment compensation (UC). A notice was sent to petitioner on February 13, 2012 telling her of her FS allotment and that she needed to report an increase in income if monthly income rose above \$2,008.

3. Earned income in March, 2012 was \$2,394.57. Petitioner did not report the increase.
4. Petitioner filed a six-month report form (SMRF) on August 21, 2012. She included two recent pay stubs from July 16 and July 30, 2012. Based on those stubs the county determined monthly income to be \$1,243.70 plus UC plus \$606 social security for the children which just started then. Total income budgeted was \$2,108.93. Petitioner did not include her July 2, 2012 pay stub for \$1,209.39 or her August 13, 2012 pay stub for \$1,197.29.
5. The agency determined that petitioner was overpaid FS because her income was under-budgeted beginning May, 2012, and it remained under-budgeted through December, 2012. By a notice dated March 18, 2016 the agency informed petitioner that she was overpaid \$2,025 during those months, claim no. [REDACTED]
6. Prior to the hearing the county revised the overpayment to \$1,479 based upon new information provided by petitioner. The new calculations are seen in Exhibit 7. The overpayment was determined by using actual income to determine the FS that would have been issued.

### 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).

Under FS rules a household must report when income rises above 130% of the federal poverty level (FPL). That is the number included in the February, 2012 notice. Petitioner should have reported the increased income by April 10, 2012, and the change would have been effective May 1. Because petitioner did not report the increase she was overpaid FS in May and June, and petitioner does not dispute those overpayments.

I disagree with the overpayment determinations for July and August, 2012. The agency used actual income from those two months to determine that petitioner was overpaid \$218 in July and \$254 in August. However, the processing month for petitioner's SMRF was August, 2012. Therefore petitioner would have received the same amount in July and August as she had received in June, 2012 (assuming, of course, that she had reported her increased income in April). Thus petitioner would have received \$192 FS in both July and August. She actually received \$218 in July and \$339 in August, so the overpayments would have been \$26 in July and \$147 in August.

Alternatively, petitioner's first big increase in income was in July, so regardless of the SMRF she would have had to report the increase by August 10. Even looking at it as a failure to report the increase in income in July, the FS would have remained the same until September. The \$121 supplement that the worker issued in early August was based on incorrect earned income, so I find that the FS should have remained at \$192.

Petitioner then argues that there should be no overpayment for September through December because she received a notice telling her that she did not have to report income anymore. However, everything that happened in those months was based upon petitioner under-reporting her income on her SMRF. She

provided two pay stubs from July 16 and July 30. They were both much lower than her typical pay stubs. I acknowledge that she probably did so in good faith and that she did not intend to defraud the agency. However, an error does not have to be intentional. Petitioner mistakenly under-reported her income on her SMRF, and as a result she received substantially more FS than she would have received. A client error overpayment can result from the client providing incorrect or incomplete information. FS Handbook, App. 7.3.2.1. That is what happened in those months. I thus am affirming the overpayments for September through December.

The result is that the overpayment in claim no. [REDACTED] is reduced to \$1,180 due to the reductions in the July and August amounts.

I note finally that initially there was a separate, smaller overpayment that petitioner also appealed. The claim was rescinded prior to the hearing, so I am taking no action on it.

### CONCLUSIONS OF LAW

1. Petitioner was overpaid FS because she failed to report an increase in income and then failed to report her income accurately on a SMRF.
2. The agency incorrectly determined the overpayment amounts for July and August, 2012 because FS would have remained at the June level until the SMRF was processed in August.

**THEREFORE, it is**

### ORDERED

That the matter be remanded to the agency with instructions to amend overpayment claim no. [REDACTED] to be \$1,180 due to the change in the overpayment amounts for July and August, 2012. The agency shall do so within 10 days of this decision. In all other respects 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 31st day of May, 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 May 31, 2016.

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