



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP- 174342

PRELIMINARY RECITALS

On May 11, 2016, the above petitioner filed a hearing request under HA 3, to challenge a decision by the Oconto County Department of Health And Human Services regarding FoodShare benefits (FS). The hearing was held on June 7, 2016, by telephone.

The issue for determination is whether the agency correctly determined that petitioner is liable for a FoodShare overpayment in the amount of \$656.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Oconto County Department of Health
And Human Services
501 Park Avenue
Oconto, WI 54153-1612

ADMINISTRATIVE LAW JUDGE:
John Tedesco

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Oconto County.
2. The agency budgeted a monthly income for the household of \$2,576.
3. Petitioner was issued notice on 10/27/14 informing her that any income exceeding a monthly amount of \$3,024 must be reported within 10 days.
4. Petitioner's household exceeded the reporting requirement in October, November, and December of 2014. Petitioner did not report the increased income.
5. The agency issued an overpayment notice to petitioner informing her that she was liable for a FS overpayment for the period from 1/1/15 to 4/30/15 in the amount of \$656.
6. Petitioner filed a request for hearing.

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) (emphasis added). 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).

An FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook at § 8.1.1.1. At the time relevant to this appeal, 130% of poverty was \$3,024 for a household of five.

The Department's case is premised upon the state wage match record which is wage information provided to the state by employers. When the state received this income information from the petitioner's and her husband's employers, it noted that the reported wages exceeded the budgeted income for the group. The agency sought employer verification from [REDACTED] which corroborated the agency's determination that the household was receiving income exceeding the reporting requirements.

The agency calculated the overpayment amounts for the months from 1/1/15 to 4/30/15 by comparing the budgeted income to the actual income. But, the number used for the actual income in each of the months of the overpayment period was a prospectively budgeted number the agency arrived at by using the November 2014 household income (\$3,258.50) divided by two and then multiplied by 2.15 for each of the months of the overpayment (January through April 2015). While this is the correct method for determining income for eligibility, his was not correct for an overpayment. The federal rules governing the FS program require and overpayment to be calculated based on a comparison of the FS issued against the FS that the household should have been issued. The agency has those actual income received

numbers for January through April 2015 which it received from the employer. The actual income received by the household based on the record in this matter appears to have exceeded the amount used for the calculation in January. But February, March and April actual income appears to be lower in each of those months which could mean that the overpayment calculated was too high. The representative stated at hearing that she was instructed to use prospective budgeting for an overpayment.

But, this is a recoupment case, not one in which we are prospectively estimating and budgeting a household's likely income. The agency is able to go back and look at pay stubs or income/wage reports and determine exactly what income was earned during the specific months of the overpayment. There is no need to use an estimate. The agency should look at the actual income received and determine the actual allotment due in determining whether there was an overpayment.

I note that I found petitioner not to be credible with regard to her statements suggesting that she was not aware of her reporting requirements and did not get most or all of the agency notices, and I affirm the existence of the overpayment. Petitioner's statements that the household did not use the benefits during the overpayment months are also not credible as they are inconsistent with the documentary evidence. In fact, when faced with the FS usage at various stores during the overpayment period, petitioner maintained that her family never shopped at any of those retailers and the only store that would be on the family's EBT history would be Woodman's. But, after additional EBT history was provided to this ALJ based on my request at hearing the history shows the same stores (Piggly Wiggly, Thompson's, Dollar General) on the history going back years. I affirm the fact of the overpayment. The only issue for this remand is the calculation method.

CONCLUSIONS OF LAW

The agency erred in using an estimate of actual income when the true received income was available to it.

THEREFORE, it is

ORDERED

That this appeal is remanded to the agency with instruction to recalculate the overpayment by determining the difference between the allotments paid and the allotments that the household was entitled to **based on the actual income received** by the household in each of the months of the overpayment period from January 2015 through April 2015. These actions shall 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.

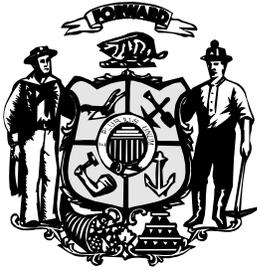
APPEAL TO COURT

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, **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 6th day of July, 2016

\s _____
John 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 July 6, 2016.

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