



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOP - 174731

PRELIMINARY RECITALS

Pursuant to a petition filed on June 1, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane Cty. Dept. of Human Services regarding FoodShare benefits (FS). The hearing was held on July 12, 2016, by telephone.

The issue for determination is whether the agency erred in determining liability for an overpayment of FS in the amount of \$1,931.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Adams County.
2. [Redacted] was the case head of a two person household with [Redacted]

3. The agency erred in budgeting income from [REDACTED] and for the periods from January 2015 to December 2015 the income was budgeted bi-weekly rather than weekly.
4. The household received FS during this period in an amount \$1,941 greater than that to which it was entitled.
5. The agency issued overpayment notices in claims # [REDACTED] and [REDACTED] in the amounts of \$1,385 and \$556 respectively which amount to \$1,941 in total.
6. Petitioner appealed.

DISCUSSION

The petitioner was an ongoing FoodShare recipient. During the periods covered by the overpayment notices, the county agency used income from [REDACTED] on a bi-weekly basis rather than the correct, weekly pay schedule. This resulted in the agency budgeting only half of the income actually earned by the household from this employer. This error caused the household to receive \$1,941 more in FoodShare benefits than it was entitled to during this period. Petitioner does not challenge the agency's calculations but merely argues that it is unfair to recover an overpayment that occurred because of its error after correctly reporting income.

I understand this argument, but federal regulations require state agencies to "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. It does not matter who caused the error. The household clearly received more FoodShare than she was entitled to. As a result petitioner must repay this overpayment even though it did not occur because of fault.

CONCLUSIONS OF LAW

The county agency correctly seeks to recover an overpayment of FoodShare that occurred because of the agency's error.

THEREFORE, it is

ORDERED

The petitioner's appeal 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, **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 1st day of August, 2016

\s _____
John 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 August 1, 2016.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability