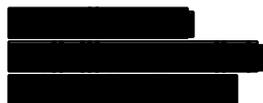




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOP - 175598

PRELIMINARY RECITALS

Pursuant to a petition filed July 15, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by Brown County Human Services to recover FoodShare benefits (FS), a hearing was held on August 10, 2016, 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, WI 53703

By: [Redacted]
Brown County Human Services
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Brown County.
2. In early 2015 petitioner received FS for himself as a one person household. The county processed a six-month report form (SMRF) in March, 2015 after petitioner reported no changes on the form. Petitioner's monthly income at the time was \$430, from his employment.

3. On March 12, 2015 the county informed petitioner that FS would remain the same as the prior month. The notice told petitioner that he needed to report to the county by the tenth of the next month if his income went above \$980.83 in a month.
4. Petitioner's income rose above that amount in May, 2015, when it rose to \$1,472.75 (May was a three-paycheck month so the county worker totaled the three paychecks, divided by 3, and then multiplied by 2.15 to determine monthly income). Petitioner's income remained at or above that level in June, July, and August. Petitioner did not report the increased income.
5. Had petitioner reported the increased income by June 10, the county would have re-determined FS for July, 2015 based upon \$1,472.75 monthly income.
6. Petitioner's son was added to the household effective July 1, 2015.
7. The county overpayment specialist calculated an FS overpayment by taking the \$1,472.75 income and determining the amount that would have been issued. For example, in July \$357 FS were issued but the two-person household would have received just \$50 in FS had the correct income been budgeted.
8. By a notice dated July 5, 2016, the county informed petitioner that he was overpaid \$906 in FS from July 1 through September 30, 2015, claim no. [REDACTED].
9. Petitioner's income decreased in September, 2015. The overpayment specialist ended the overpayment with September, 2015 FS because FS would have returned to the higher amount in October, based upon the lower September income.

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 Handbook, App. 7.3.2.1, specifically tells the agency worker to determine an overpayment by taking the income and expenses that would have been budgeted had the changes been reported correctly.

In petitioner's case, had he reported increased income by June 10, 2015, the change would have been made for July FS. While it is true that May was a three-paycheck month, petitioner should have been aware of an increase in income, especially since the county was budgeting \$430 monthly income, and the lowest of the three paychecks in May was \$427. The county thus would have budgeted the May income beginning July 1, and would have continued to budget that amount until petitioner reported a decrease, which occurred in September.

I conclude that the county correctly determined the overpayment. I reviewed the county's calculations and find no error.

CONCLUSIONS OF LAW

The county correctly determined that petitioner was overpaid \$906 FS from July through September, 2015.

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, **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 August, 2016

\s _____
Brian 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 August 15, 2016.

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