



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOP - 176502

PRELIMINARY RECITALS

Pursuant to a petition filed August 31, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by the Northern IM Consortium to recover FoodShare benefits (FS), a hearing was held on September 22, 2016, by telephone.

The issue for determination is whether the agency correctly determined an FS overpayment for failing to report income.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Northern IM Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Wood County.
2. Petitioner received FS in 2013 through 2015 as a one-person household. In November, 2015 the agency determined that petitioner was overpaid \$970 in FS from November, 2013 through May, 2015 because her shelter cost was not budgeted correctly. Petitioner appealed and the determination was sustained in case no. FOP-170757.

3. When petitioner did her annual recertification in November, 2015, she reported that she was receiving \$200 per month maintenance from her ex-husband. It was discovered then that she had been receiving the maintenance since August, 2013.
4. The agency determined that petitioner was overpaid FS beginning October 1, 2013 because the \$200 monthly income was not budgeted. By notices dated August 17, 2016, the agency informed petitioner that she was overpaid an additional \$2,231 in FS during the period October 1, 2012 through October 31, 2015 because she did not report the maintenance income timely. The claim numbers for these FS claims were [REDACTED]

### 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).

I must conclude that the overpayment calculation was correct. Petitioner did not dispute the calculations. She testified that she was sure she told the agency about the maintenance when she started to receive it, and she questioned her ability to repay the overpayment. There simply is no record that petitioner reported the income prior to November, 2015, and it is clear that the income was not budgeted from 2013 until November, 2015. The agency action was correct. The Division of Hearings and Appeals does not have authority to reduce the amount based upon ability to pay or lack of financial resources.

### CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid FS because she did not report income timely.

**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 26th day of September, 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 September 26, 2016.

Wood County Human Services - WI Rapids  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability