



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: FOP - 200326

PRELIMINARY RECITALS

Pursuant to a petition filed on October 27, 2020, under Wis. Admin. Code §HA 3.03, to review a decision by the Eau Claire County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on January 4, 2021, by telephone. A hearing scheduled for December 8, 2020, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare that allegedly occurred in 2017 because of the agency's error.

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: 
Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Eau Claire County.

2. The department seeks to recover \$860 of the FoodShare the petitioner's household received from June 1, 2017, through September 30, 2017. It notified the petitioner of this overpayment on September 22, 2020.
3. On May 5, 2017, the department received verification showing that the petitioner worked 40 hours a week and earned \$11.25 per hour. Despite this, the department incorrectly based her benefits on the assumption that she worked 40 hours every two weeks rather than 40 hours every week.
4. The department notified the petitioner on May 8, 2017, that her FoodShare would increase from \$42 to \$261 per month.
5. The department submitted no documentation showing that it discovered its error within one year of May 5, 2017.

DISCUSSION

The amount of FoodShare a household receives depends upon its size and income. State agencies must “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This generally means that the department must recover all overpayments regardless of whose fault caused the overpayment. The department seeks to recover \$860 of the FoodShare the petitioner's household received from June 1, 2017, through September 30, 2017, because it made an error and undercalculated her wages.

Federal law requires state agencies to pursue most FoodShare claims back at least 12 months from when the overpayment was discovered. 7 CFR § 273.18(c)(1)(i). Wisconsin limits claims caused by its agency's errors to 12 months from the date the error was discovered. *FoodShare Wisconsin Handbook* § 7.3.2.1. On May 5, 2017, the department received verification showing that the petitioner worked 40 hours a week and earned \$11.25 an hour. Nevertheless, it based her benefits on the assumption that she worked 40 hours every two weeks. This caused her FoodShare to increase from \$42 to \$261 a month. The department contends that it can recover the overpayment because discovered its error on February 26, 2018.

The department has the burden of proving that an overpayment exists by the preponderance of the evidence. Because its own rules bar it from recovering overpayments caused by its own errors if it does not discover those errors within one year, one thing it must prove to prevail is that it did discover the overpayment within one year. Although the department asserts that it discovered its error early in 2018, it submitted no documentation supporting its assertion. The only documentation showing that it was aware that it had given the petitioner more FoodShare than she was entitled to was the overpayment notice it sent her on September 22, 2020, which is three years after the alleged overpayment. Because the department has not proved by the preponderance of the evidence that it discovered the overpayment within one year of any portion of the June 1, 2017, through September 30, 2017, period in which it contends that the overpayment occurred, it cannot recover any of its claim.

CONCLUSIONS OF LAW

The department may not recover the recover the \$860 overpayment of the FoodShare it alleges the petitioner's household received from June 1, 2017, through September 30, 2017, because the department's own error caused the overpayment and it has not proved by the preponderance of the evidence that it discovered this overpayment within one year of when it occurred.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it end its efforts to recover any of the FoodShare the petitioner's household received from June 1, 2017, through September 30, 2017, and that it take all steps necessary to remove the overpayment finding from her record.

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, 4822 Madison Yards Way, 5th Floor North, 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.

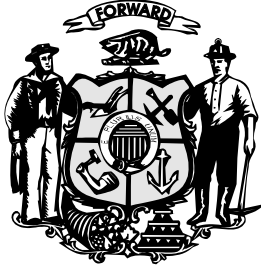
APPEAL TO COURT

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 5th day of January, 2021

\s _____
Michael D. O'Brien
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 January 5, 2021.

Eau Claire County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability