



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/170919

PRELIMINARY RECITALS

Pursuant to a petition filed December 18, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on January 28, 2016.

The issue for determination is whether the agency has established an overpayment of FS against the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By:  IM Specialist Adv.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On September 24, 2015 the petitioner filed an appeal on her FS benefits which were going to be reduced effective October 1, 2015. See Exhibit 4. Pursuant to petitioner's appeal request, the

agency was ordered to restore her FS, pending the outcome of the fair hearing. *Id.*

3. Petitioner was then subject to a fair hearing decision, #FOO/168930 (dated 12/11/15) which upheld the agency's action to reduce her FS.
4. On December 18, 2015 petitioner filed a rehearing request on appeal #FOO/168930. On January 4, 2015 the Division of Hearings and Appeals denied the rehearing request.
5. On December 15, 2015 the agency sent petitioner a notice stating that she had been overissued FS in the amount of \$748 in October and November 2015 because of benefits continued during the fair hearing due to client error. See Exhibit 5.
6. Petitioner was overissued FS in the amount of \$748 in October and November 2015 due to the continuation of her benefits for appeal #FOO/168930. See Exhibits 1 and 5.
7. On December 18, 2015 petitioner filed an appeal on the FS overpayment.

DISCUSSION

The issue for determination is whether the agency correctly concluded that petitioner was overissued FS. FS overpayments are calculated by determining the correct amount of food stamp benefits, if any, the household was entitled to receive, and establishing a claim for the difference between the allotment the household received and the allotment the household should have received. 7 C.F.R. §273.18(c)(1). I have reviewed the agency's determination on that overpayment and find no errors.

The federal regulations concerning FS overpayments require the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b). The *FS Handbook* also states that a client error can occur when the overissuance was caused by an unintended error due to continuation of benefits pending a fair hearing decision. *FS Handbook*, §7.3.1.9, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. This is what occurred here.

Petitioner appeared at this hearing and wanted to contest the original reduction from appeal #FOO/168930. Unfortunately, no one at this hearing, including petitioner, was apparently aware that petitioner had filed a rehearing request on appeal #FOO/168930, nor that on January 4, 2015 the Division of Hearings and Appeals (DHA) denied the rehearing request. Accordingly, this administrative law judge took time after this hearing to make sure that petitioner's December 18 appeal was processed as a rehearing request. When it was discovered that the rehearing was processed, and subsequently denied, this administrative law judge placed a call to petitioner, as was discussed at hearing would be done. This administrative law judge explained these foregoing facts to petitioner on her voicemail. The end result of all of this is that petitioner does not get to contest the reduction in this hearing; her chance to contest it occurred at the hearing for appeal #FOO/168930 and in her rehearing request on *that* appeal. Because the DHA denied her rehearing request, her only recourse for contesting the reduction at that point was to appeal to court, as explained at the end of the Decision #FOO/168930.

The agency is required to establish a claim against any FS group that has received more FS than it was entitled to receive. *FS Handbook*, §7.3.1.1; see also Exhibit 6. The agency has shown that FS were issued when the agency was ordered to restore her FS, pending the outcome of the fair hearing on appeal #FOO/168930. Accordingly, I must uphold the overpayment. I add that I could not change the result because it might be fair, as I lack the equitable powers to grant the relief sought. See *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). Petitioner may want to contact the Public Assistance Collection Unit to see if an affordable repayment arrangement can be made, or if she is

currently receiving FS, she may want to have the repayment made through the recoupment of any current FS benefits.

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overissued FS in the amount of \$748 in October and November 2015 due to the continuation of her benefits for appeal #FOO/168930.

THEREFORE, it is ORDERED

That the petition for review herein be and the same 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, Madison, Wisconsin 53703, **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 Milwaukee,
Wisconsin, this 3rd day of February, 2016

\sKelly Cochrane
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 February 3, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability