



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/171693

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on March 30, 2016, at Milwaukee, Wisconsin.

There remains no issue for determination.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: 
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Milwaukee County.
2. On December 16, 2015 the agency sent the petitioner FoodShare (FS) overpayment notices stating that following:

- a. From December 12, 2011 to November 30, 2012 she was overpaid \$2,329 in FS benefits under claim number [REDACTED].
 - b. From December 1, 2012 to November 30, 2013 she was overpaid \$2,389 in FS benefits under claim number [REDACTED].
 - c. From December 1, 2013 to November 30, 2014 she was overpaid \$2,203 in FS benefits under claim number [REDACTED].
 - d. From December 1, 2014 to September 30, 2015 she was overpaid \$1,140 in FS benefits under claim number [REDACTED].
3. On the day of the hearing the petitioner submitted tax returns from the above overpayment periods. The Department reviewed the tax returns the morning of the scheduled hearing. The Department determined that the overpayments were incorrect based on the submitted tax returns.
 4. The Department has agreed to rescind all of the above-referenced overpayment claim numbers. They have agreed to re-determine if an overpayment exists, and the amount of that overpayment. If they determine that there is still an overpayment, they would issue that overpayment under a new claim number, and send a new overpayment notice with new appeal rights.

DISCUSSION

The federal regulation concerning FS overpayments requires 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), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, App. 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. Id. The date of discovery is the date the agency became aware of the potential that an overissuance may exist. Id.

In this case there remains no issue for determination. The petitioner submitted tax returns, which the Department reviewed. The Department determined that this overpayment was incorrect. They have agreed to rescind the overpayment, and thus there remains no issue for my determination.

If the Department determines that there is still an overpayment, they will issue new overpayment notices under new claim numbers. These notices will contain new appeal rights. The Department stated that if they issue a new overpayment, it would be for a completely different amount.

CONCLUSIONS OF LAW

The overpayment is reversed because the agency has determined that they issued the overpayment in error.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to rescind overpayment claim numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The agency shall comply with this order within 10 days of the date of decision.

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 4th day of April, 2016

\sCorinne Balter
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 April 4, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]