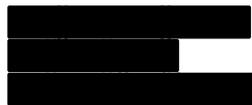




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/173955

PRELIMINARY RECITALS

Pursuant to a petition filed April 27, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on May 26, 2016, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner was overpaid FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Kenosha County.
2. Petitioner was sent a FoodShare overpayment notice, dated March 21, 2016, that informed Petitioner that he had been overissued FoodShare in the amount of \$1199.00 during the period of September 2014 through March 2015.

3. The reason for the overissuance alleged here is that Petitioner made an error on a six month report form. That error made it appear that earned income from the [REDACTED] had ended. Based on this Petitioner's FoodShare allotment increased.
4. The six month report form involved here was completed on September 11, 2014. Petitioner had 2 jobs listed, one being the [REDACTED] and the other an employment that ended. He inadvertently put the end date for the one employer for both employers. He had also indicated that there was no change to the [REDACTED] job so; again, it is apparent that this was just a mistake.

### DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare 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 (FSH), §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 FSH, §7.3.1.9. However, overpayments due to agency error may only be recovered for up to 12 months prior to discovery. FSH, §7.3.2.1. Overpayments due to client error may be recovered for up to six years after discovery. *Id.*

It is quite clear from the six month report form and the testimony that Petitioner made a mistake on the SMRF. He was not trying to mislead the agency. Nonetheless, overpayments have to be recovered even in cases of a mistake. And while the look back for an agency error is 12 months it is 6 years for a recipient error. I cannot deem this to be an agency error.

For Petitioner's benefit the following describes repayment provisions:

#### 7.3.2.12 Repayments

A member who makes a repayment agreement may not be subject to tax intercept as long as he or she is meeting the conditions of the agreement. If a member's repayment agreement becomes delinquent, which is defined as three missed payments over the life of the debt and has been sent three dunning, or past due, notices, he or she is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments.
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

### CONCLUSIONS OF LAW

That the evidence does demonstrate that Petitioner was overissued FoodShare as alleged.

**THEREFORE, it is**

**ORDERED**

That this appeal is 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 24th day of June, 2016

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\sDavid D. Fleming  
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 June 24, 2016.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability