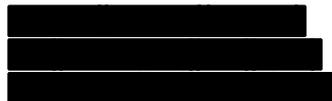




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOP - 174257

PRELIMINARY RECITALS

On May 12, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03, to challenge a decision by the Public Assistance Collection Unit regarding FoodShare benefits (FS). The hearing was held on July 7, 2016, by telephone.

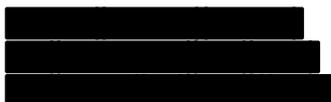
The issue for determination is whether the Office of Inspector General (OIG) correctly determined the Petitioner was overpaid FoodShare benefits for the period of April 8, 2014 through June 30, 2014.

NOTE: The record was held open until July 11, 2016, to give the Petitioner an opportunity to submit medical and school records for her daughter. Nothing was received by the designated deadline.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI53703

By:  PARIS Agent
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Waukesha County.

2. On April 8, 2014, the Petitioner contacted the agency to apply for FoodShare benefits and helath care benefits for herself and her daughter. (Exhibit 3)
3. On March 3, 2016, OIG received an e-mail from an Indiana agency indicating that the girl's father was receiving food stamp benefits for, but that it did not believe the child was in Indiana, because, "there hasn't been a Medicaid case since June 30, 2014". (Exhibit 6)
4. On March 8, 2016, the Office of Inspector General (OIG) sent the Petitioner a FoodShare Overpayment Notice, claim number [REDACTED], indicating she was overpaid \$438.00 in benefits for the period of April 8, 2014 to June 30, 2014. No overpayment notice was attached. (Exhibit 2)
5. The Petitioner filed a request for fair hearing that was received on May 12, 2016. (Exhibit 1)

DISCUSSION

"A household shall live in the State in which it files an application for participation" in the food stamp program. *7 CFR §273.3(a)* "No individual may participate as a member of more than one household or in more than one project area, in any month..." Id. *See also FoodShare Wisconsin Handbook (FSH)§3.4.1*

In the case at hand, the agency asserts that the Petitioner received Wisconsin Foodshare benefits for her daughter, which she was not entitled to receive. The agency asserts the daughter was receiving benefits in Indiana on her father's case.

It is undisputed that the Petitioner applied for Wisconsin Foodshare benefits for herself and her then three-year old daughter on April 8, 2014. However, OIG has provided no concrete evidence affirmatively establishing where the child was residing.

The Petitioner testified that the child was with her in Wisconsin. Given that the Petitioner applied for health care benefits for the child in Wisconsin, it is more likely than not, that the child was in Wisconsin. Further, an Indiana agency also indicated that it believed the child was in Wisconsin.

Because the child was in Wisconsin, she was entitled to receive benefits in Wisconsin on her mother's case. "Children are included in the food unit where they reside..." *FSH §3.4.1* Per Indiana policy, if a person's primary residence, meaning, "the location where the individual spends the majority of the time during the month", is "located somewhere other than the residence of the assistance group, the individual is not eligible to receive TANF or SNAP as a member of the assistance group." *Indiana ICES Program Policy Manual*¹ §3205.05.00. As such, the child's father was not entitled to receive benefits for her, because she was not living with him. If there has been an overpayment of benefits, it was to the child's father not to the Petitioner.

Additionally, OIG's notice to the Petitioner was defective.

A notice of overissuance is mandatory in a FoodShare overpayment case:

7.3.1.8 Notice of Overissuance

A Notice of FS Overissuance (F-16028), a completed FS Overissuance Worksheet (F-16030) and a FS Repayment Agreement (F-16029) must be sent to the client for all types of claims.

...

FoodShare Wisconsin Handbook (FSH), §7.3.1.8.

¹ The Indiana ICES Program Policy Manual referred to above can be found at: <http://www.in.gov/fssa/files/3200.pdf>

This FSH requirement follows Federal law. See 7 Code of Federal Regulation 273.18(e)(3).

The overpayment notice (Exhibit 2) did not include the overpayment worksheet, which was submitted as a separate exhibit (Exhibit 10). It is not clear whether the worksheet was sent to the Petitioner. Even if the worksheet was sent to the Petitioner, it was not complete.

The second and third columns that are supposed to show how the agency calculated the Petitioner's benefits are blank. This is problematic, since the overpayment amount in the first column is different than the overpayment amount in the second and third column. Without the additional information, there is no way to know whether the agency correctly calculated the alleged overpayment.

Proper notice is fundamental to due process. The United States Court of Appeals for the 7th Circuit has long held that to be the case. In Dilda v. Quern, the Court found that a state agency had violated the due process of rights of public assistance recipients, because the notice advising them of the reduction or cancellation of their benefits failed to provide the recipient with a detailed notice showing the breakdown of income and allowable deductions. Dilda v. Quern, 612 F. 2d 1055 (7th Cir. 1980). Certainly, that applies to an overpayment also.

Because the overpayment worksheet was not complete and because it is unclear whether it was given to the Petitioner with the overpayment notice, OIG's notice to the Petitioner was defective and so, for that reason also, the overpayment cannot be upheld.

I note to OIG that there is nothing prohibiting them from conducting further investigation into this matter and issuing an overpayment notice at a later date, if it deems it appropriate.

CONCLUSIONS OF LAW

OIG has not met its burden to prove the Petitioner was overpaid FoodShare benefits for the period of April 8, 2014 through June 30, 2014.

THEREFORE, it is

ORDERED

That OIG rescind overpayment claim # [REDACTED]. OIG shall take all administrative steps necessary to complete that task within 10 days of this 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, **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 25th day of July, 2016

\s _____
Mayumi M. Ishii
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 July 25, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability