



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP- 174485

PRELIMINARY RECITALS

On May 20, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03, to challenge a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS). The hearing was held on June 14, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services correctly determined the Petitioner was overpaid \$100 in benefits for the period of June 13, 2011 to June 30, 2011.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED], HSPC, Sr.
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 14, 2016, Milwaukee County prepared an Administrative Disqualification Hearing Notice, alleging that the Petitioner traded \$200 in Food Share benefits for cash. (Exhibit 2, pg. 11)
3. An Administrative Disqualification Hearing took place on April 25, 2016; the Petitioner did not appear, so the hearing took place in her absence. (Exhibit 2, pgs. 10-11)

4. On May 10, 2016, the Division of Hearings and Appeals issued a decision finding that the Petitioner “intentionally violated and intended to violate the FS program rules specifying that an FS recipient shall not knowingly transfer food coupons except to purchase Food.” (Exhibit 2, pg. 15)
5. On May 13, 2016, Milwaukee Enrollment Services (the agency) sent the Petitioner an overpayment notice for claim [REDACTED], indicating that she had been overpaid \$100.00 for the period of June 13, 2011 to June 30, 2011, due to the trafficking of benefits. (Exhibit 3)
6. On May 20, 2016, the Petitioner filed an appeal, indicating that she was appealing a termination and overpayment of medical assistance benefits. She apparently, marked the wrong boxes on the hearing request form. (Exhibit 1)

DISCUSSION

In order to prove the alleged overpayment, the agency relies upon the decision issued in case FOF-172652. However, that decision does not support the alleged overpayment.

First, the decision issued in FOF-172652 states that the agency alleged \$200 in trafficking, but the overpayment notice alleges only \$100 in trafficking. So, there is a question regarding whether the overpayment that was the subject of FOF-172652 is the same overpayment alleged in the May 2016 overpayment notice and if so, which amount is correct.

Second, the decision issued in FOF-172652 made no finding with regard to the amount of the benefits trafficked. The decision indicated rather vaguely that, “Respodnet’s quest cared was utilized in a transaction involving [REDACTED].” (Exhibit 2, pg. 11, paragraph 3) The decision also indicated that, “On March 14, 2016, [the agency] prepared an *Administrative Disqualification Hearing Notice* alleging that Respondent intentionally transferred FS benefits to [REDACTED], in the amount of \$200 in exchange for cash payment(s)”. (Exhibit 2, pg. 11, paragraph 7) However, the ALJ made no decision with regard to the amount of benefits trafficked. (Exhibit 2, pgs. 11 and 15) He only made a finding that trafficking in some unspecified amount, on some unspecified date occurred. *Id.* As such, the decision issued in FOF-172652 does not support a finding that \$100 in trafficking occurred between June 13, 2011 and June 30, 2011.

The agency also provided Exhibit 4, which contains a Merchant Summary and a Client Summary. The Merchant Summary shows that on June 13, 2011, and June 16, 2011, a card ending in [REDACTED] was used to make \$100 purchases on each of those days, for a total of \$200. However, the Client Summary indicates that the card ending in [REDACTED] was not issued until July 11, 2011, a month after the alleged trafficking took place, which means there is something faulty in one or both of those records. It is unclear where the fault lies. So, those documents do not support a finding that the Petitioner trafficked and was therefore overpaid \$100 in benefits between June 13, 2011 and June 30, 2011.

Based upon the foregoing, the \$100 overpayment claim cannot be upheld at this time.

The Petitioner also indicated that she wanted to appeal the discontinuance of FoodShare benefits that resulted from the decision in FOF-172652. The Petitioner claims that the ALJ incorrectly denied her request to reschedule the disqualification hearing, even though she got the Administrative Disqualification Hearing notice at the last minute and could not get off of work. However, Federal regulations prohibit further administrative appeals after an administrative disqualification hearing. See, 7 C.F.R. § 273.16(e)(8)(ii). Rather, an appeal for judicial review must be filed in circuit court, as the Petitioner was instructed on page 7 of the decision issued in case FOF-172652. The Petitioner is referred to that decision page for the procedures necessary to appeal to a circuit court. (That decision is included in Exhibit 2 and appears to have been sent to the same address the Petitioner provided in Exhibit 1.)

If Petitioner would like legal assistance with an appeal to circuit court, she can contact Legal Action of Wisconsin at (414) 278-7722; 230 W. Wells St., Milwaukee, WI 53203.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services has not met its burden to show that it correctly determined that the Petitioner was overpaid \$100 in benefits for the period of June 13, 2011 to June 30, 2011.

THEREFORE, it is ORDERED

It is hereby ordered that the agency rescind overpayment claim # [REDACTED] that alleged a \$100.00 overpayment for the period of June 13, 2011 to June 30, 2011. The agency shall take all administrative steps to complete this 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 12th day of July, 2016

\s _____
Mayumi 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 12, 2016.

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