

2. On August 25, 2014 the agency issued a notice of FS overpayment to petitioner's mother stating that she was overpaid FS in the amount of \$1736 due to client error.
3. The agency has been recouping the FS overpayment through petitioner's FS benefits.

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs.

Before a negative action is taken by an FS agency, the agency must mail an adequate notice of the action at least ten days before the effective date of the action. 45 C.F.R. §205.10(a)(4)(i)(A); 42 C.F.R. § 431.211; 7 C.F.R. §273.13(a)(1); *FS Handbook* §6.3.1. It is the responsibility of the agency to provide a copy of this notice to demonstrate that such notice was, in fact, issued by the agency within the requisite timeframe.

At the hearing the agency's representative could not provide a notice of decision to show that petitioner was informed of the FS overpayment. The notice issued to her mother did not even name petitioner as a liable party. Accordingly, I find that the agency has not met its burden to support the FS overpayment against petitioner. It is the agency's burden to show that it sent the information to her correct address of record and it did not do that. The agency did not state how long petitioner's FS have been recouped to offset this overpayment, and therefore my order will direct the agency to determine the time period and amounts of what FS to supplement to her. I therefore am ordering that the overpayment be rescinded, and any collection of FS through petitioner's own FS case cease, and any FS recouped under this claim be reinstated to petitioner.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it correctly established an overpayment of FS against petitioner.

THEREFORE, it is

ORDERED

That the petition herein be remanded to the agency with instructions to:

- (1) cease collection efforts against petitioner under claim # [REDACTED] due to defective notice.
- (2) Redetermine petitioner's FS effective with the first date that the agency began recouping of claim # [REDACTED] against her FS case;
- (3) Issue any FS to petitioner as a refund of the recouped FS under claim # [REDACTED].
- (4)

These actions shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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, **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 August, 2016

\s _____
Kelly 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 August 4, 2016.

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