



FH



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION
Case #: FOP - 175525

PRELIMINARY RECITALS

Pursuant to a petition filed on July 14, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department regarding FoodShare benefits (FS), hearings were held on August 18, 2016 and September 14, 2016, by telephone.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$15,686 for the period of August, 2007 – November, 2014 due to an intentional program violation.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner lived in Wisconsin from 2003 – 2005. In 2005, Petitioner moved to Indiana. She applied for and received Indiana FS benefits.
3. Petitioner moved back to Wisconsin in January, 2006. On January 19, 2006, the Petitioner applied for and was approved to receive FS benefits in Kenosha, Wisconsin. Petitioner continued to receive FS benefits from Wisconsin through November 30, 2014.
4. On November 13, 2014, the Wisconsin FS agency was notified by the Indiana Division of Family Services that the Petitioner had a FS IPV finding with a sanction in effect from August 1, 2007 – July 31, 2017. The Indiana agency was unable to produce a copy of the hearing notice sent to the Petitioner, the hearing decision or any other evidence related to the IPV other than a one-page screen print and two dated case comments. The screen print shows the Indiana case number, date of the hearing (June 22, 2007), “release date” for the decision (August 1, 2007), the decision action (“sustained”) and an address for the Petitioner in [REDACTED] Indiana. The “screen level comments” are dated August 16, 2006 and July 31, 2007. The note on August 16, 2006 notes that the Indiana agency was made aware of the Petitioner’s application for Wisconsin FS on January 19, 2006 while she was still receiving Indiana benefits. It states that her Wisconsin application was discovered when a Kenosha County worker contacted the agency about the Petitioner’s application and to determine the status of her Indiana benefits. Petitioner’s Indiana FS benefits were discontinued in January, 2006. The comment further states that the Indiana agency established an overpayment against the Petitioner for the month of January, 2006 in the amount of \$152. The case comment dated July 31, 2007 states that the Petitioner was disqualified from the FS program by an ALJ due to receiving duplicate benefits from Wisconsin and Indiana and a disqualification period of 10 years from August 1, 2007 – July 31, 2017 was imposed.
5. On June 28, 2016, the Wisconsin agency issued Notices of FS Overpayments and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the total amount of \$15,686 for the period of August, 2007 – November, 2014 due to a client error in not reporting the IPV as follows:

Claim # [REDACTED]	\$1,930	August 1, 2007 – July 31, 2008
Claim # [REDACTED]	\$1,863	August 1, 2008 – July 31, 2009
Claim # [REDACTED]	\$ 750	August 1, 2009 – January 31, 2010
Claim # [REDACTED]	\$2,400	February 1, 2010 – January 31, 2011
Claim # [REDACTED]	\$2,400	February 1, 2011 – January 31, 2012
Claim # [REDACTED]	\$2,400	February 1, 2012 – January 31, 2013
Claim # [REDACTED]	\$2,367	February 1, 2013 – January 31, 2014
Claim # [REDACTED]	\$1,576	February 1, 2014 – November 30, 2014
6. On July 14, 2016, the Petitioner filed an appeal with the Division of Hearings and appeals.

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), emphasis added; see also FoodShare Wisconsin Handbook (FSH), § 7.3.2.1. 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,

§ 7.3.2.1. The agency is authorized to recover overpayments 6 years prior to discovery for a client error. Id. The agency is authorized to recover overpayments 12 months prior to discovery for agency error. Id.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

The county agency in this case does not base its overpayment action on an intentional program violation but alleges an error by the Petitioner in failing to report an IPV at her application in January, 2006 and/or at subsequent renewals for Wisconsin FS benefits from 2007 - 2014.

The Petitioner's representative argues that the agency has not met its burden because the agency's evidence is not sufficiently reliable to establish that there is an IPV finding and sanction against the Petitioner. The Petitioner asserts that the only evidence presented by the agency of the IPV consists of hearsay statements from the State of Indiana. The actual hearing decision and any documents related to the IPV are not available. According to testimony by the Wisconsin agency worker at the hearing in this case, the Indiana agency reported that it only retained the documentation related to this IPV for 7 years and then destroyed it.

The Petitioner's representative cites the following FS regulation:

(6) If a State determines that supporting documentation for a disqualification record that it has entered is inadequate or nonexistent, the State agency shall act to remove the record from the database. 7 CFR § 273.16(i)(6).

The Petitioner's representative asserts that while DHA cannot order the State of Indiana to remove the IPV, it should not uphold an overpayment based on an IPV where sufficient evidence to support it no longer exists.

The Petitioner's representative further notes that the federal regulation governing the IPV process requires states to report the entry of IPV's to FNS and requires them to "use the data to determine the eligibility of individual Program applicants prior to certification . . ." 7 CFR § 273.16(i)(1) and (4). She notes that a DHS Operations Memo dated September 15, 2014 (Ops Memo #14-14) advises county agencies that a new CARES Worker Web automatic, real time update of IPV sanction information imposed by other states was available effective September 15, 2014. The memo notes that "workers have been required to query IPV sanction using DXQI (a national master database for all IPV sanctions) from other states . . ." The Ops Memo states that this query for IPV's is to be done "at application, renewal, person add, program add and SMRF". The Petitioner's representative argues that, though there was a new system for conducting a query established in September, 2014, there was a previous DXQI system and agencies were required to conduct queries using this system prior to September, 2014.

The Petitioner argues that the fact that the Wisconsin agency did not discover any IPV from 2007 – 2014 supports her argument that the hearsay information regarding the IPV is unreliable. If the agency properly conducted queries at each of Petitioner's renewals from 2007 – 2014, the IPV should have existed in the DXQI master database and should have been discovered by the Wisconsin agency. The fact that the Wisconsin agency was unaware of this IPV until November 30, 2014 calls into question the accuracy of the information regarding the existence of the IPV and any sanction that may have been imposed.

The Petitioner's representative is correct that the only evidence of the IPV is hearsay documentation from Indiana that was not authenticated in any way at the hearing. No witness from Indiana testified in support of the existence of the IPV. There was no evidence regarding the process by which Indiana input the information contained in the screen print about an IPV into its system. Without the actual IPV documentation or evidence regarding how the information in the screen print was entered, I conclude that the Wisconsin agency's evidence is insufficiently reliable to establish that there was an IPV finding and sanction.

The Petitioner's representative argues that if an IPV finding and sanction does exist, any overpayment of Wisconsin FS benefits as a result of an IPV is due to agency error, not client error. Several agency errors can be identified. On the other hand, there is no evidence to demonstrate that the Petitioner was aware of the IPV prior to receiving the June, 2016 notices of overpayment and therefore no evidence that she erred in failing to report it.

As noted above, the FS regulations require agencies to conduct queries for IPV's from other states. If the IPV was imposed by Indiana in 2007, its existence should have been discovered by the agency during the numerous reviews/renewals from 2007 – 2014. The agency either failed to discover the IPV or failed to act on it.

I further note that the Indiana agency erred when it apparently failed to update the Petitioner's address after becoming aware that she moved to Wisconsin. It failed to act diligently and provide the Petitioner with due process notice of any IPV action. As dicta, while I have no authority to re-open any IPV case against the Petitioner in Indiana, the evidence presented in this matter does not suggest there was an intentional act by the Petitioner in January, 2006 to commit a program violation. When she moved to Wisconsin and applied for FS benefits, there is evidence that she properly advised the Wisconsin agency that she had moved from Indiana. There is evidence that the Indiana and Wisconsin agencies communicated in January, 2006 about Petitioner's move. Indiana closed the Petitioner's case at the end of January, 2006. It appears that Petitioner may have received FS benefits of \$152 from Indiana and pro-rated benefits for the period of January 19 – 31, 2006 from Wisconsin. While I do not have the evidence from any IPV hearing, I cannot see how the Petitioner's actions constitute an IPV and justify a 10 year sanction of benefits and a resulting overpayment action for \$15,686.

In summary, I conclude that there is insufficiently reliable evidence to establish that there was an IPV finding and sanction entered against the Petitioner. Therefore, there is no evidence that there was an overissuance of Wisconsin FS benefits to the Petitioner. As dicta, even if sufficient evidence of an IPV existed, the agency did not prove that any overissuance as a result of an IPV was due to client error in failing to report the IPV. Rather, any overissuance that may have resulted is due to agency error. At the hearing, the agency conceded that, in any case, the overpayment period it established is incorrect. Even if there was an overissuance due to client error, the agency would have been authorized to recover only six years prior to the discovery on November 30, 2014 so the overpayment would have started on November 30, 2008.

Based on the evidence, the agency did not meet its burden and this matter is remanded to the agency to rescind its overpayment actions against the Petitioner.

CONCLUSIONS OF LAW

The agency did not meet its burden to demonstrate that there was an overpayment of FS benefits to the Petitioner.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind the overpayment claims against the Petitioner referenced in Finding of Fact #5 above. These actions shall be completed within 10 days of the date 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 5th day of October, 2016

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 5, 2016.

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

