



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/142924

PRELIMINARY RECITALS

Pursuant to a petition filed August 08, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 09, 2012, at Milwaukee, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Katherine May

Milwaukee County Department of Human Services
1220 W. Vliet Street
1st Floor, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a notice that informed him that he had been overissued FoodShare benefits in the amount of \$2400.00 for the period from June 1, 2011 to May 31, 2012. (Claim # 4900361114.) Exhibit # 3.
3. The reason for the overissuance alleged here is that Petitioner was incarcerated during the period of the overissuance and was not, therefore, eligible for FoodShare benefits.

4. Petitioner did receive \$2400 of FoodShare benefits for the period alleged and those benefits were used.
5. Petitioner was incarcerated effective May 6, 2011 through May 31, 2012. His probation was revoked and he did not have Huber privileges.
6. Online renewals for Petitioner's FoodShare case were completed on May 25, 2011 and again on November 21, 2011. Phone interviews were completed for the case on June 11, 2011 and November 23, 2011. The six-month report form was filed on April 25, 2012. The PIN (personal identification number) for Petitioner's QUEST card never changed.
7. FoodShare benefit recipients are advised that they are responsible for keeping their PIN safe and that the PIN should not be written on the card or kept with the card. See Ex # 10.

DISCUSSION

Federal law generally requires that all FS overpayments be recovered, regardless of whether the recipient or the county is at fault. Those regulations provide, in relevant part, as follows:

- (a) Establishing claims against households** . All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH), § 7.3.1.1.

In an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. T Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

Persons who are incarcerated for more than 30 days are not eligible for FoodShare benefits unless they meet certain Huber criteria. *See FSH, § 3.2.1.2.2.* Petitioner did not have Huber privileges during the period involved here.

I also note that the Wisconsin FoodShare program issues FoodShare benefits to eligible recipients electronically. FoodShare recipients are issued a plastic magnetic swipe QUEST card to use to access their allotted FoodShare benefits at point of sale (POS) terminals in authorized retail food outlets. After the card is swiped through the POS terminal, the recipient enters a four-digit number selected by the cardholder, the PIN. PINs are used along with the QUEST card to prevent unauthorized use of the card. A purchase cannot be processed without the correct PIN entry. *CARES Worker Web (CWW) Process Help, Ch. 80, §80.1.2.* A recipient shall report a lost, stolen or damaged card to recipient customer service. Benefits may only be replaced up to the point in time that the recipient reports the loss to customer service and/or if lost due to system errors or malfunctions. *CWW, § 80.3.6.*

Petitioner maintains that his wallet was lost or stolen just before he was incarcerated in May 2011. He does not, therefore, believe that he should be responsible for this overpayment. He does concede, however, that he had his PIN with his QUEST card to help remember that PIN.

It is curious that the person using Petitioner's FoodShare card was so diligent about completing required reviews and phone interviews. It is not even clear to me how that person would have known about the review due at the end of May 2011. But, regardless, Petitioner was not eligible for FoodShare benefits during the time in question as he was incarcerated. He was, therefore, overissued FoodShare benefits as alleged. Further, by keeping his PIN number with his QUEST card he did not safe guard the benefits as required.

CONCLUSIONS OF LAW

That Petitioner was overissued FoodShare benefits for the period from June 1, 2011 through May 31, 2012 as he was incarcerated during that period and received FoodShare benefits that he was not eligible to receive.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of October, 2012

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

c: Public Assistance Collection Unit, DWSPACU@wisconsin.gov - DWSPACU@wisconsin.gov
Division of Health Care Access and Accountability, DHSDHADHCAA@Wisconsin.gov -
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Milwaukee County



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The preceding decision was sent to the following parties on October 26, 2012.

Milwaukee County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability