



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/143143

PRELIMINARY RECITALS

Pursuant to a petition filed August 15, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by Milwaukee Enrollment Services in regard to an overissuance of FoodShare benefits (FS), a hearing was held on September 20, 2012, at Milwaukee, Wisconsin. Respondent offered to resubmit certain information specific to its claim of overissuance, but said information was not received.

The issue for determination is whether the respondent erred in determining that petitioner received an overpayment of FS benefits during the period of November 1, 2011, through June 30, 2012.

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: Mary Hartung

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received FS benefits from at least September, 2008, through July, 2012.
2. Following an investigation of a wage discrepancy, respondent determined that petitioner was overpaid FS benefits from November 1, 2011, through June 30, 2012. Respondent identified the overpayments as follows:

Claim No. [REDACTED] \$ 56.00
 Claim No. [REDACTED] \$ 432.00
 Claim No. [REDACTED] \$1,334.00

3. On August 15, 2012, petitioner timely filed a request for fair hearing contesting the respondent's determination of a FS overpayment.

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), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. 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 FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, respondent Milwaukee Enrollment Services (MES) has the burden of proof to establish that the action taken by MES was proper given the facts of the case. Once established, the petitioner must then rebut the MES case and establish facts sufficient to overcome MES's evidence of correct action.

Respondent concedes that the alleged overpayment was the result of agency error, i.e., the petitioner provided her wage information, but that information was incorrectly added to her case resulting in an incorrect budgeting of her earned income. In testimony at hearing, respondent conceded that it had incorrectly established Claim Nos. [REDACTED] and [REDACTED]. As such, I will remand those claims to the respondent in order that respondent rescind them as to the petitioner.

As to the remaining Claim No. [REDACTED] the respondent concedes that the amount of the alleged FS overpayment previously asserted, \$1,334.00, is in error, and that it "appears" that the correct amount is \$1,048.00. Unfortunately, nothing in the record substantiates this claim. I note that the respondent submitted a voluminous amount of paperwork in an attempt to establish the basis for the claimed overpayments. Unfortunately, the majority of the wage information was illegible. Despite the MES representative's offer to provide (via facsimile) a more cogent and claim-specific response post-hearing, nothing was received. The lack of legible wage information further impedes my ability to discern whether or not the respondent calculated this claim correctly.

I had indicated at hearing that I planned to remand this matter to the respondent for a review and redetermination of the third claim, Claim No. [REDACTED]. However, the respondent's failure to produce the promised documentation establishing any basis for its claim of the revised amount of \$1,048.00 in overpaid FS benefits has resulted in the respondent's failure to meet its burden of proof and demonstrate that the overpayment determination was proper. While I commend the respondent for recognizing that two of its three overpayment claims were completely erroneous and that the third claim was allegedly in need of revision, I cannot ignore the respondent's failure to properly establish any basis for the propriety of the third claim, as revised.

CONCLUSIONS OF LAW

1. The county agency incorrectly determined that the petitioner was overpaid \$56.00 of FS in FS Overissuance Claim No. [REDACTED] and incorrectly determined that petitioner was overpaid \$432.00 of FS in FS Overissuance Claim No. [REDACTED]
2. The county agency incorrectly determined that the petitioner was overpaid \$1,334.00 of FS in FS Overissuance Claim No. [REDACTED] and the county agency failed to establish that said Claim should be revised to \$1,048.00.

NOW, THEREFORE, it is ORDERED

That the matter is remanded to the county agency with instructions to rescind the overpayment determinations made against the petitioner in the following claims:

Claim No. [REDACTED]	\$ 56.00
Claim No. [REDACTED]	\$ 432.00
Claim No. [REDACTED]	\$1,334.00

These actions shall be completed within 10 days of the date of this Decision.

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 Madison,
Wisconsin, this 8th day of October, 2012

Peter McCombs
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 October 8, 2012.

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