



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/143356

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on September 20, 2012, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overpayment of FS benefits in the amount of \$400 from the Petitioner for the period of June, 2012 – July, 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: Sue Rhode

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. In November, 2011, a warrant was issued for the Petitioner's arrest relating to two felony charges for Manufacture/Deliver THC and Maintain Drug Trafficking Place.

3. On June 4 and July 14, 2012, the Petitioner received FS benefits of \$200/month.
4. On July 11, 2012, the agency received notification that the Petitioner was in custody at the Waukesha County Jail.
5. On July 28, 2012, the Petitioner was released from jail.
6. On July 30, 2012, the Petitioner reported to the agency that she had been released from jail.
7. On August 10, 2012, the agency issued a Notice of FS Overissuance to the Petitioner notifying her that the agency seeks to recover \$400 in FS benefits overissued to her for June and July, 2012. The notice indicated that the reason for the overissuance was the Petitioner's status as a fleeing felon not eligible for FS.
8. On August 20, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Persons who are fleeing felons and/or probation/parole violators are not eligible to receive FS benefits. A fleeing felon is defined in the FS Handbook as "a person who is *fleeing to avoid prosecution or custody/ confinement after a felony conviction.*" FS Handbook § 3.18.1. A probation and parole violator is defined as "a person who is in violation of conditions of probation or parole imposed by state or federal law." FSH § 3.18.1.

An individual who is incarcerated for more than 30 days is ineligible for FS. FSH § 3.2.1.2.2.

In this case, the Petitioner did not dispute that she had a warrant for her arrest on two felony charges since November, 2011 and at the time that she applied for and received FS benefits in June and July, 2012. The Petitioner testified that she had received a number of notices from the agency regarding her benefits notifying her that she was not eligible for benefits because she wasn't a US citizen, gave a wrong address and wasn't a Wisconsin resident. The Petitioner was asked to provide copies of these notices as the agency did not have them. Petitioner provided a notice regarding her health care benefits dated July 16, 2012 indicating she could not get health care benefits because she was in jail and because she must "be a Wisconsin resident to get this benefit." She also provided a notice regarding her FS benefits dated July 16, 2012 which indicated that effective August 1, 2012, she would not receive FS benefits because she is not a Wisconsin resident. The Petitioner's arguments are not relevant to the overissuance case. The notices provided by the Petitioner relate to eligibility determinations, not the overissuance.

As to the overissuance, I find the agency properly concluded that the Petitioner was a fleeing felon when benefits were issued on June 4, 2012. However, she was in custody on July 14, 2012 when the July FS benefits were issued and the agency had been notified of this on July 11, 2012. The Petitioner was incarcerated for less than 30 days. Therefore, I conclude the Petitioner is not liable for an overpayment as a fleeing felon or incarcerated individual for July, 2012.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits in the amount of \$200 from the Petitioner for June, 2012. The agency does not properly seek to recover an overissuance of FS benefits in the amount of \$200 from the Petitioner for July, 2012.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to rescind its overpayment claim against the Petitioner for the month of July, 2012. This shall be done within 10 days of the date of this decision.

With regard to the agency's overpayment action for June, 2012, the petition is dismissed and the agency may take action to collect an overpayment of \$200 from the Petitioner for June, 2012.

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 12th day of October, 2012

Debra Bursinger
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, DHSADHCAA@Wisconsin.gov -
DHSADHCAA@Wisconsin.gov
HSDS.Department@co.washington.wi.us, HSDS.Department@co.washington.wi.us - Waukesha County



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
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 12, 2012.

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