



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/143651

PRELIMINARY RECITALS

Pursuant to a petition filed September 05, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Sauk County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 27, 2012, at Baraboo, Wisconsin. With consent of the petitioner, the record was held open for a period of 10 days to allow for the submission of further documentation by the respondent; said documents were received on September 27, 2012.

The issue for determination is whether the respondent erred in determining that petitioner was overpaid FS benefits during the period of November, 2011, and February, 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: Kay Baetje

Sauk County Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sauk County.

2. The petitioner received FS for her household of 4 persons from at least November, 2011, through February, 2012. During said time period, the petitioner was employed at [REDACTED] [REDACTED] [REDACTED], an adult member of the FS group, was employed through QTI.
3. The petitioner reported income for both herself and Mr. [REDACTED] on her December ACCESS online renewal. A FS review interview was conducted on February 22, 2012, and concluded on March 2, 2012.
4. The agency received a computer wage cross-match from the Department of Workforce Development's employer wage reporting database. This was referred to O'Brien and Associates for determination of FS overpayment due to income.
5. On August 28, 2012, the county agency issued a Notice of FoodShare Overissuance to the petitioner. That notice advised the petitioner that she had been overpaid \$2,284.00 in FS for the November, 2011 through February, 2012, period. The overpayment was caused by an increase in the household's earned income. Exhibit 4.

DISCUSSION

I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

273.18 Claims against households .

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) ***Benefits that are overpaid*** or
- (ii) Benefits that are trafficked. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

(4) The following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim ...

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card.

(c) *Calculating the claim amount* – (1) *Claims not related to trafficking.* (i) As a State agency, you must calculate a claim back to at least twelve months prior to when you become aware of the overpayment. ...

(e) *Initiating collection actions and managing claims .*

(1) *Applicability.* State agencies must begin collection action

on all claims unless the conditions under paragraph (g)(2) of this section apply.

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (viewable at www.emhandbooks.wi.gov/fsh/). The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected.

II. AN OVERPAYMENT OCCURRED FROM NOVEMBER, 2011, THROUGH FEBRUARY, 2012.

A household is required to report increases in income within 10 days of the event, as opposed to waiting for its annual case review. *FSWH*, 6.1.1.2. The county agency contends that the petitioner failed to report her household's increased income in a timely fashion, which resulted in the overpayment alleged here. The petitioner does not deny that she and Mr. [REDACTED] were employed, as described above. She also does not challenge the arithmetic of the overpayment calculation.

The petitioner argues that she did not fail to timely report her wages, and that she specifically asked her employer to send employment verification to the respondent. However, even if the petitioner had timely reported the increased earnings, and the overpayment resulted from a delay or error on the part of the county, I would still have to direct recovery of the overpayment here, based on the federal rule. While I do not doubt the sincerity of the petitioner's testimony, recovery of FS overpayments is mandated regardless of who was at fault. I cannot find that the petitioner has established that respondent erred in determining this FS overpayment, regardless of how that overpayment arose.

CONCLUSIONS OF LAW

The county agency correctly determined that petitioner received an overpayment of FS benefits in the amount of \$2,284.00 for the November, 2011 to February, 2012, period (claim # [REDACTED])

THEREFORE, it is ORDERED

That the petition 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 Madison,
Wisconsin, this 30th day of October, 2012

Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



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 30, 2012.

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