



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/143741

PRELIMINARY RECITALS

Pursuant to a petition filed September 11, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the PACU - 5173 in regard to FoodShare benefits (FS), a hearing was held on October 10, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly established a FoodShare overpayment due to petitioner receiving contemporaneous benefits in both Tennessee and Wisconsin.

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: Aimee Rentmeester
PACU - 5173

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner lived in Tennessee with her children for approximately five months in 2011. Petitioner received FS benefits through the State of Tennessee while she was living there. Those benefits terminated on March 31, 2012.
3. Petitioner relocated to Wisconsin in approximately September, 2011, and commenced receiving FS benefits through the State of Wisconsin on September 12, 2011.

DISCUSSION

If a FS overpayment occurred during the time in question, the agency must make an effort to recover it, regardless of who was at fault in creating the overpayment. An FS overpayment is defined as:

(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 or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive...

See, 7 C.F.R. §273.18(a). Thus, even if a FS agency in either Wisconsin or Tennessee was the cause of the overpayment, the petitioner must still repay it. The agency believes that an overpayment occurred here because the petitioner's household continued receiving FS from Tennessee even after she moved to Wisconsin. The applicable regulation can be found at 7 CFR §273.3(a) and the *FoodShare Wisconsin Handbook* § 3.4.1, which states:

A person cannot be a member of more than 1 food unit and 1 *FS* group in the same month except residents of shelters for battered women and children.

Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits. States typically issue benefits on either a calendar or fiscal month. A fiscal month cycle provides benefits from a date in one month to a corresponding date in the next month. California (Fresno), Massachusetts, Nevada and South Dakota issue on a fiscal month cycle. Tennessee issues benefits by calendar month (first day through the last day of the month) and by fiscal month (16th through 15th). Wisconsin issues on a calendar month cycle.

**** (Text – box example omitted here.)

Workers should contact the other state to verify the FS end date.

In any Fair Hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case. This applies when the action is based on proving that a person was overpaid FS. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the county agency's evidence of correct action by the county agency in determining the negative action was required.

The petitioner concedes that she did formerly live in Tennessee and received FS benefits from that state through at least March, 2012. However, the petitioner stated that she never actually, personally, received FS from Tennessee during the period of September 12, 2011 – March 31, 2012. She testified that she believed that her daughter had called to cancel her Tennessee benefits when petitioner moved.

The documentation obtained from Tennessee is quite clear. FS benefits were issued to her Tennessee electronic benefits card in each of the months identified in the Wisconsin overpayment period.

At hearing, the petitioner appeared mainly concerned with demonstrating that she did not *intend* to receive duplicate benefits. I do not doubt her sincerity, and the respondent assured her that its investigation of the overpayment revealed no evidence of any fraud on her part.

The agency has established a prima facie case showing that the petitioner was overpaid FS benefits by Wisconsin while she was receiving FS benefits from Tennessee. The petitioner has failed to rebut this showing. The FS overpayment determination must be sustained under these facts.

CONCLUSIONS OF LAW

1. The petitioner was ineligible for Wisconsin FS during the months she was receiving FS from Tennessee, September 12, 2011 – March 31, 2012.
2. The petitioner received an overpayment of FS in Wisconsin in the amount of \$1,290.00 during the period of September 12, 2011 – March 31, 2012.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be, and the same hereby 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 31st 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 31, 2012.

PACU - 5173
Public Assistance Collection Unit
Division of Health Care Access and Accountability