



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/143886

PRELIMINARY RECITALS

Pursuant to a petition filed September 14, 2012, under Wis. Admin. Code, §HA 3.03, to review a decision by the Marinette County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on October 31, 2012, by telephone.

The issue for determination is whether the issue appealed by petitioner has already been adjudicated.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Sandra Waugus
Marinette County Dept. of Human Services
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.
2. On November 11, 2011, the agency informed petitioner that his household had been overpaid \$1,529 in FS from September 1 through November 30, 2011.
3. Petitioner appealed that notice on February 21, 2012. In a decision dated April 3, 2012, case no. FOP-138990, the Division of Hearings and Appeals concluded that the appeal was untimely, thus upholding the overpayment claim.

4. Petitioner filed this appeal on September 14, 2012, again contesting the November 11, 2011 claim.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

In this case petitioner failed to appeal the November 11, 2011 overpayment notice within 90 days as prescribed by federal law. A prior hearing decision dismissed petitioner's prior appeal. At this point there remains no jurisdiction to review the matter because the original appeal was untimely.

I note that petitioner's position is that he never requested the continued benefits that led to the overpayment claim, that his county worker did all the paperwork. Even if that is the case, the federal rules require recovery of all overpayments including ones caused by agency error.

CONCLUSIONS OF LAW

Petitioner's appeal of an FS overpayment claim was previously adjudicated as being untimely, and thus the Division of Hearings and Appeals cannot reach the merits now.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 served and 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 2nd day of November, 2012

Brian C. Schneider
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 November 2, 2012.

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