



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/144782

PRELIMINARY RECITALS

Pursuant to a petition filed October 24, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephone hearing was held on November 20, 2012, at Milwaukee, Wisconsin. At the request of both parties the record was held open for 10 days for the submission of additional information.

The issues for determination are: **1) Whether the petitioner's appeal contesting the agency determination that she was overpaid \$2,854 in FS (January – November, 2011) is timely as a matter of law; 2) Whether the Department correctly determined that the petitioner was overpaid \$1,759 in FS (January – August, 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: Belinda Bridges, HSPC
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was receiving FS as the casehead of a FS group in the periods of January – November, 2011, and January – August, 2012.

2. On July 23, 2012, the county agency issued two Notice(s) of Food Stamps Overissuance and attached worksheets (demonstrating the computation of the overpayments), to the petitioner at her still current residence address, informing her that she was overpaid \$2,854 in the period of January – November, 2011, and \$1,759 in the period of January – August, 2012. The petitioner received these Notices.
3. That the petitioner’s ex-husband, [REDACTED] [REDACTED], was living in her household in at least the period of January – August, 2012, and he had the additional income in this period that the county agency added to the FS budget for the period of January – August, 2012, that is reflected in the FS budgets of the FS overpayment for this time period shown in Exhibit #1; and the petitioner admitted that [REDACTED] was in the home in this time period and did not contest at any time that the household had the income budgeted by the agency.
4. On October 24, 2012, the petitioner filed an appeal contesting both FS overpayment determinations made on July 23, 2012.

DISCUSSION

1) Whether the petitioner’s appeal contesting the agency determination that she was overpaid \$2,854 in FS (January – November, 2011) is timely as a matter of law.

Appeals concerning a negative action taken by the Department against a FS household, like the instant overpayment determinations, must be filed within 90 days of the effective date of the negative action. 7 C.F.R. § 273.15(g). An overpayment determination is generally considered to be effective on the date of the Notice advising a recipient of the overpayment determination. Here, that date was July 23, 2012. The appeal contesting both overpayments was filed by the petitioner on October 24, 2012, 94 days after the effective date.

The appeal concerning the period of January – November, 2011, was totally and clearly untimely under fact and law, and must be dismissed.

2) Whether the Department correctly determined that the petitioner was overpaid \$1,759 in FS (January–August, 2012).

The appeal concerning the January – August, 2012, period arguably concerns a determination that was negative and effective with the August, 2012, benefit month, which would have been within 90 days prior to the instant appeal. I will take jurisdiction over the second FS overpayment appeal under this analysis.

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.*

When a household receives more FS than it was entitled to receive, it must be recovered by the agency. FoodShare Wisconsin Handbook, 7.3.1.9.

Here, the petitioner fully admitted that her ex-husband, [REDACTED] [REDACTED] had been living with her as of at least August, 2011, through the present. She did not otherwise contest *in any way* the income and household composition asserted by the agency in the second FS overpayment budget for the period of January –

August, 2012. Rather, she asserted that [REDACTED] was not in her household before that month. That evidence, however, is completely irrelevant to the FS overpayment claim for the period of January – August, 2012. In addition, in a prior and separate fair hearing, ALJ David Fleming sustained the discontinuance of the petitioner's FS, effective September 1, 2012, on essentially the same household composition and eligibility evidence. See, Exhibit #2, Decision in DHA Case No. FOO/142641 (Wis. Div. Hearings Appeals, September 24, 2012).

The county agency has produced documentary evidence demonstrating that the petitioner was notified of the second overpayment, provided with calculations of the overpayment, and that the household had the income used in the calculations. And the petitioner did not directly contradict any of it. Rather, she merely asserted that [REDACTED] did not begin living with her again until August, 2011.

Based upon the preponderance of the evidence, the county agency has established that it is more likely than not that the petitioner was overpaid \$1,759 of FS in the period of January – August, 2012, and the petitioner has not rebutted this evidence at all. Rather, she admitted [REDACTED] was in the household; and she did not contest the income budgeted by the agency for this time period. The second overpayment determination must be sustained on the merits of the issue.

CONCLUSIONS OF LAW

- 1) That the petition for review is untimely as to FOP Claim # [REDACTED] (\$2,854 – January to November, 2011); that overpayment is established as a matter of legal fact and record.
- 2) That the petition for review is timely as to FOP Claim # [REDACTED] (\$1,759 – January to August, 2012).
- 3) That the county agency correctly determined that the petitioner was overpaid \$1,759 in FS in FOP Claim # [REDACTED], due to client error in reporting her household composition and income.

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 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 18th day of December, 2012

\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on December 18, 2012.

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