



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/145169

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 04, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overpayment of FS benefits in the amount of \$4,096 for the period of October 27, 2011 – September 30, 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: Katherine May

Milwaukee County Department of Human Services
1220 W. Vliet Street
1st Floor, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The Petitioner's date of entry into the United States as a legal permanent resident was August 27, 2008 and the Petitioner's wife's date of entry was August 28, 2008.

3. On October 27, 2011, Petitioner completed an online ACCESS application for FS benefits. The agency processed the application on October 28, 2011 and approved FS benefits for the Petitioner.
4. On September 17, 2012, a review was completed. The agency discovered that it had approved FS benefits to the Petitioner in error due to Petitioner not being a qualifying immigrant for 5 years before receiving FS benefits.
5. On October 25, 2012, the agency issued an overpayment notice to the Petitioner notifying him that the agency seeks to recover an overpayment of \$4,096 for the period of October 27, 2011 – September 30, 2012.
6. On November 12, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

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 FS Wisconsin Handbook (FSH), 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 FS, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FSH, § 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. Id.

An individual who is lawfully admitted to the U.S. for permanent residence is eligible for FS benefits if one of the following conditions is met

- meets work quarters, or
- meets military requirement, or
- receives disability benefit, or
- under age 18, or
- has lived in the US as a qualified alien for 5 years from the date of entry, or
- a legal resident on August 22, 1996, and born before August 22, 1931

FSH, § 3.12.1.1.

In the instant case, the agency asserts that the Petitioner was not eligible for FS benefits when he applied on October 27, 2011 because he did not meet any of the criteria above. The agency concedes that agency error resulted in the Petitioner receiving FS benefits to which the Petitioner was not entitled. The alleged overpayment occurred 12 months prior to the discovery date, so the non-client error recovery method is clearly appropriate under law.

The Petitioner concedes that he did not meet the criteria and that he will not likely meet any of the conditions for eligibility until October, 2013 when he will have lived in the U.S. for 5 years. He testified that he is not able to repay the overpayment at this time so he filed an appeal.

At the hearing, the agency indicated that it can defer repayment of the overpayment until the Petitioner qualifies for FS benefits in October, 2013 at which time, the agency will recoup the overpayment by reducing the amount of benefits the Petitioner will receive. The Petitioner testified that he will be willing to repay the overpayment in this way.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overpayment of \$4,096 for the period of October 27, 2011 – September 30, 2012.

THEREFORE, it is

ORDERED

That the petition be, and 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 Milwaukee,
Wisconsin, this 10th day of January, 2013

\sDebra Bursinger
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 January 10, 2013.

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