



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/145416

PRELIMINARY RECITALS

Pursuant to a petition filed November 19, 2012, under Wis. Admin. Code, §HA 3.03, to review a decision by the Waupaca County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on January 24, 2013, by telephone. A hearing set for January 3, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner timely appealed an overpayment determination.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Chris Machamer
Waupaca County Dept. of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Illinois. She formerly received FS in Waupaca County.
2. Petitioner received FS from April, 2011 through March, 2012. In February, 2012, the agency began an investigation into whether petitioner resided in Wisconsin.
3. On February 15, 2012 petitioner reported that she was living in [REDACTED] Ill. She followed that report by filing a "declining aid" form on February 20.

4. On February 25, 2012, the agency sent petitioner a notice to her [REDACTED] address in Waupaca. That address was the most recent Wisconsin address reported by petitioner. The notice informed petitioner that she was overpaid \$2,400 in FS from April 1, 2011 through March 31, 2012 because it was determined that she lived in Illinois during that period.
5. On February 27, 2012, the agency sent a second notice to petitioner at the [REDACTED] IL address. The notice again informed petitioner that she was overpaid \$2,400 in FS from April 1, 2011 through March 31, 2012, claim no. [REDACTED]. The notice was not returned by the postal service.
6. Petitioner filed this appeal contesting the overpayment claim on November 19, 2012.

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.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii). 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).

Petitioner's appeal was filed almost nine months after the notice. Petitioner testified at the hearing that she did not receive any notices until a dunning notice in September. It is possible that petitioner did not see, or open, a notice until the dunning notice in September, but I cannot believe that she did not receive a notice.

Petitioner testified that she did not change her address to [REDACTED] until June, 2012, after which she filed a declining aid form. However, case notes show that she changed the address on February 15, 2012 and the declining aid form was dated February 20. In addition, the investigation report says that petitioner told the investigator on February 14 that she moved to [REDACTED] the week before and that she would report the change to her worker immediately. (I note that the case notes go on to say that petitioner reapplied for FS on March 23, 2012, reporting that she had moved back from Illinois, and then in July she reported moving back to Illinois again, so I believe that petitioner is mistaking the later report as her only report of a move to Illinois). I find that the February 27 notice of overpayment was sent to the correct [REDACTED] IL address.

The agency also sent an overpayment notice to the last Wisconsin address. Thus I find it impossible to believe that petitioner received no notice of the overpayment in February, 2012. She may not have opened her mail and seen it, but it was sent to the correct address and not returned by the postal service. I conclude, therefore, that petitioner's appeal was untimely, and that the agency can recover the claimed overpayment.

CONCLUSIONS OF LAW

Petitioner's appeal of an FS overpayment claim was untimely.

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 28th day of January, 2013

\sBrian C. Schneider
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 28, 2013.

Waupaca County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability