



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/145848

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2012, under Wis. Admin. Code, §HA 3.03, to review a decision by the Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on January 9, 2013, by telephone.

The issue for determination is whether petitioner was overpaid FS because of “fleeing felon” status.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Atty. Patricia DeLessio
Legal Action of Wisconsin, Inc.
230 W. Wells St., Room 800
Milwaukee, WI 53203

Respondent:

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

By: Alma Lezama
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received \$1,064 in FS beginning in March, 2011 through February, 2012.
3. On August 25, 2009, petitioner was convicted of Failure to Report to Jail, a Class H Felony, in Ozaukee County Circuit Court. He was ordered to pay \$378 in court costs by December 9, 2009. On December 9, 2009, an arrest warrant was issued for petitioner for failing to pay the fees. As of 2012 the warrant still was pending.

4. The agency discovered the existence of the warrant and found that it still was pending. By a notice dated September 13, 2012, the FS agency notified petitioner that he was overpaid the \$1,064 in FS because he was a fleeing felon during the period he received the FS, claim no. [REDACTED]
5. Petitioner was unaware of the warrant, and there is no evidence that the police were actively seeking him.

DISCUSSION

7 C.F.R. §273.11(n) reads at present: “Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony ... or who are violating a condition of probation or parole under a Federal or State law shall not be considered eligible household members.” Accordingly, the FS Handbook, Appendix 3.18.1, provides:

Deny FS Program eligibility to persons who are fleeing felons and/or probation/parole violators.

A fleeing felon is a person who is fleeing to avoid prosecution or custody/confinement after a felony conviction. A probation and parole violator is a person who is in violation of conditions of probation or parole imposed by state or federal law.

Obtain felon information by asking the client at application or review if any household members meet the above criteria. Document the response in case comments.

Neither the federal regulation nor the Handbook provide any detail on the meaning of “fleeing” or what proof the agency needs to deny eligibility.

Petitioner testified that he was unaware of the warrant, or that he even owed the fees. The Failure to Report to Jail charge stemmed from an earlier Operating While under the Influence (OWI) charge. The OWI matter was closed, and petitioner testified that he thought all issues were resolved with the end of the OWI charge. He testified that he made no effort to conceal his whereabouts, and that the first he heard about the warrant was when he received the overpayment notice.

Petitioner cited a proposed rule found in the Federal Register at 76 Federal Register, No. 161 (Aug. 19, 2011). The proposal was to amend 7 C.F.R. §273.11(n) to provide a better definition of “fleeing felon” with the goal being more consistent application of the rule among FS agencies. Specifically, the proposal is that the agency must verify (1) that there is a felony warrant for the individual, (2) the individual is aware of, or should reasonably have been able to expect that, a warrant has or would have been issued, (3) the individual has taken some action to avoid being arrested or jailed, and (4) the a law enforcement agency is actively seeking the individual. 76 Fed. Reg. 161, page 51913.

Of course, as of this date the proposal has not been adopted that I can see. Note that I went to the Code of Federal Regulations website and found the most current version of 7 C.F.R. §273.11(n), and it has not been changed to adopt the proposed rule. Nevertheless, the proposed rule sheds light on the intended meaning of the phrase “fleeing felon.” There must be intent to flee, and a law enforcement agency must actively been seeking the person.

In this case the evidence shows that petitioner was not avoiding the police. He testified that he did not even know about the warrant, and his explanation, that he though all matters were concluded when his OWI matter concluded, has credibility. Petitioner is not hiding. He continues to live in the same area of

Milwaukee as in 2009. In December, 2011, his operator's license was reinstated without mention of the warrant. Furthermore, there is no evidence that the Ozaukee County authorities were actively seeking to enforce the warrant (after learning of the warrant petitioner contacted Ozaukee County authorities himself and set up a payment plan).

The agency cites a recent fair hearing decision, no. FOP-143543, dated November 2, 2012, that upheld an overpayment based upon fleeing felon status. However, the petitioner in that case did not contest the issue of whether her husband was or was not a fleeing felon. The case thus is not useful in dealing with the issue.

In addition, I am troubled by the lack of detail in the FS Handbook concerning this issue. As noted above, economic support workers are told to ask the applicant if she or any household members have felony information. There is nothing in the Handbook describing a definition of fleeing felon, and there is nothing in the Handbook detailing a process for recovering overpayments against individuals who might have that status.

I conclude that the best evidence is that petitioner was not "fleeing to avoid prosecution" during the period he received FS. The overpayment claim thus must be rescinded.

CONCLUSIONS OF LAW

Petitioner did not meet the definition of an individual "fleeing to avoid prosecution" of an arrest warrant issued for failure to pay court costs.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to rescind FS overpayment claim no. [REDACTED] against petitioner and to cease recovery of it. The agency shall take the action within 10 days of this decision.

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 22nd day of January, 2013

\sBrian 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 January 22, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
pdl@legalaction.org