



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/146532

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Sauk County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 28, 2013, by telephone.

The issue for determination is whether the petitioner was overpaid FS totaling \$1,104 for the July 1 through December 31, 2012, period.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Michelle Hirschinger, ES Spec.
Sauk County Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Sauk County.

2. The petitioner was issued FS allotments totaling \$1,104 for the July through December 2012 period. On December 6, 2012, the Department issued a *Notification of FS Overissuance* and worksheet to the petitioner. The *Notification* advised that the petitioner had been overpaid \$1,106 for the 7/1/12 – 12/31/12 period. The basis for the overpayment was the agency's determination that the petitioner had failed to report a change in residence to another state.
3. The petitioner resided at [REDACTED] prior to and into October 2012. She moved to Minnesota on October 10, 2012. The petitioner did not report her change in residence until November 28, 2012.
4. The petitioner was hospitalized on an emergency basis on September 30, 2012, at Mile Bluff Medical Center, Mauston, Wisconsin. From there she was transferred to a hospital in LaCrosse Wisconsin, where she remained until October 9, 2012. Although the petitioner desired to return to her LaValle residence, she was too frail to live on her own. She therefore moved to Minnesota to be closer to her daughter.
5. The petitioner continued to put charges on her FoodShare card after November 1, 2012. She does have an unused balance of \$112.65 on her FS card.

DISCUSSION

I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

273.18 Claims against households .

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) ***Benefits that are overpaid*** or
- (ii) Benefits that are trafficked. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

(4) The following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount* – (1) *Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment

...

(e) *Initiating collection actions and managing claims.*

(1) *Applicability.* State **agencies must begin collection action on all claims** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>). The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected.

II. THE PETITIONER WAS OVERPAID FS FOR THE 11/1/12 – 12/31/12 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's income is in dispute. Rather, the petitioner explained that she resided in Wisconsin until moving to Minnesota shortly before November 1, 2012. The petitioner's position was bolstered by Medicare hospital records that were submitted. The petitioner was hospitalized on September 30 in a hospital near her LaValle residence. Due to the gravity of her condition, she was then transferred to a hospital in LaCrosse, Wisconsin until October 9. Also, per prescription labels that were submitted by the petitioner, she refilled prescriptions at a Reedsburg pharmacy in July and August, 2012.

The agency's evidence includes a cryptic, incomplete analysis from O'Brien & Associates. It noted that the petitioner applied for Medicaid in Minnesota in November, and that a review of the usage of her FoodShare EBT card showed sporadic use of the card in Minnesota going back to May 2012. The investigator did not indicate if all or some percentage of the use was in Minnesota. Nor were dates of use provided. The investigator did not interview the petitioner or a LaValle neighbor to clarify the petitioner's whereabouts. This is not enough evidence to meet the agency's burden of establishing the overpayment for July through October.

The petitioner's daughter explained that the petitioner did visit her several times from May through September 2012, and that the petitioner did use her card in Minnesota during visits. In the absence of any details as to the frequency and dollar amount of the Minnesota use, this explanation is plausible.

The overpayment is sustained for November and December 2012. Because the petitioner was no longer a Wisconsin resident, she had no right to use her card in those months. *FSWH*, §3.2.1. She argues that she was misled by positive eligibility notices that she received from Wisconsin; however, as noted above, fault is irrelevant to recovery of overpayments that are less than one year old. She may wish to apply for FoodShare in Minnesota, if she has not already done so.

CONCLUSIONS OF LAW

1. The petitioner was overpaid FS from November, 2012 through December 31, 2012, due to lack of Wisconsin residency. [Detailed worksheets are not in the record, so I cannot compute the new overpayment myself.]
2. The petitioner was not overpaid FS from July through October 2012.

THEREFORE, it is

ORDERED

That the petition is remanded to the county agency with instructions to reduce the petitioner's FS overpayment by subtracting the issuance amounts for July through October 2012 from the petitioner's overpayment total. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 12th day of March, 2013

\sNancy J. Gagnon
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 March 12, 2013.

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