



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/146691

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Fond du Lac County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 7, 2013, at Fond du Lac, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$5,367 in FS from 11/1/11 through 11/30/12.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Deb Bohlman, ESS
Fond du Lac County Department of Social Services
87 Vincent Street
Fond du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.
2. The petitioner received FS as a household of four persons (self, adult child [REDACTED], and two others) for November 2011. She received FS as a household of three persons (including herself

and [REDACTED] from at least December, 2011, through November, 2012. [REDACTED] is currently 20 years old.

3. On November 27, 2012, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$853 in FS for the 11/1/11 – 12/31/11 period (claim # [REDACTED]). Exhibit 1A. The overpayment was due to client error.

On November 27, 2012, another *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$4,514 in for the 1/1/12 – 11/30/12 period (claim # [REDACTED] 3). Exhibit 1B. The overpayment was due to client error.

4. The agency learned that [REDACTED] had and continues to have earned income from a job that began in July 2011. The first few months' of earnings were at a level that was low enough that the petitioner was not required to report it until her case was reviewed. The case was due for a six month review in October 2011. The petitioner did not report earnings from any household member in the October 2011 review. Exhibit 1C. The agency later realized that [REDACTED]'s income should have been reported in October 2011, and that the income caused the household to be overpaid throughout the November 2011 through November 2012 period. The petitioner does not contest the earnings figures obtained by the county from the employer.

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 11/1/11 –11/30/12 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 was unaware of her daughter’s employment. As the income received by the daughter is not challenged, an overpayment was created here. The daughter must be treated as part of the household because she is under age 22, and her income must be counted. 7 C.F.R. § 273.1(b).

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$5,367 FS from November, 2011 through November 2012, due to client error.
2. The county agency is correctly pursuing recovery of that overpayment, pursuant to federal law.

THEREFORE, it is

ORDERED

That 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 8th 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 April 23, 2013.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability