



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/148122

PRELIMINARY RECITALS

Pursuant to a petition filed March 19, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare (FS) benefits, a hearing was held on April 09, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether respondent established an overpayment of FS benefits to petitioner during the time periods of February, 2012 through April, 2012, and August, 2012 through January, 2013.

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: Nikitia Howse
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, and received FS benefits during, at least, the time periods of February, 2012 through April, 2012, and August, 2012 through January, 2013.

2. Petitioner was sentenced to serve time in the [REDACTED] on December 27, 2011. Petitioner commenced his sentence on January 11, 2012, and was released on August 17, 2012.
3. Petitioner completed an FS review on December 30, 2011. At that time he did not indicate his sentencing status. Petitioner completed an application again on August 16, 2012, one day prior to his release from the Huber facility.
4. On March 11, 2013, respondent sent petitioner a Notification of FS Overissuance and a FoodShare Overpayment Worksheet identifying an overpayment of FS benefits in the amount of \$600.00 during the period of February 1, 2012, through April 30, 2012 (Claim No. [REDACTED]).
5. On March 11, 2013, respondent sent petitioner a Notification of FS Overissuance and a FoodShare Overpayment Worksheet identifying an overpayment of FS benefits in the amount of \$1,103.00 during the period of August 16, 2012, through January 31, 2013 (Claim No. [REDACTED]).
6. Petitioner timely filed a Request for Fair Hearing on March 19, 2013.

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

An individual who is incarcerated for more than 30 days is ineligible for FS. FoodShare Wisconsin Handbook § 3.2.1.2.2. Respondent was incarcerated from January 11, 2012, through August 16, 2012.

The respondent correctly established an overpayment for the time period of February 1, 2012, through April 30, 2012. The respondent conceded in testimony at hearing that he was incarcerated during this period, and was unable to substantiate his vague claims concerning identity theft. The respondent also presented hearsay testimony that petitioner had utilized his FS benefits card to pay rent in the past. More notably, the respondent pointed out that petitioner had been again using his FS card following his release from incarceration. The respondent reasoned, therefore, that his card had not been misappropriated since it was again in his possession.

I have more trouble with the overpayment claim for the period of August 16, 2012 through January 31, 2013. The petitioner apparently requested FS benefits on August 16, 2012, the day *prior* to his release from incarceration. Respondent testified that, had petitioner applied on August 17, 2012, this overpayment claim would not exist. Respondent’s position is essentially this: Based on an invalid FS application dated August 16, 2012, all FS benefits paid after that date are improper and constitute an overpayment. The respondent has not established any other basis for the overpayment determination during the period of August 16, 2012 through January 31, 2013, *i.e.* income in excess of program limits, incorrect reporting of household members, lack of residency, etc.

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). While petitioner was incarcerated on August 16, 2012, the record does not demonstrate

that he was incarcerated between August 17, 2012 and January 31, 2013. Furthermore, the record does not reveal that the respondent ever determined the amount that the petitioner should have received following his release from incarceration. For that reason, the respondent has not established the propriety of its overpayment determination for the period of August 17, 2012 through January 31, 2013. I find the imposition of an overpayment during this time period to be punitive rather than corrective.

As such, I will remand this matter to the respondent for review and re-determination to establish FS overpayments during the period of February 1, 2012 through April 30, 2012, and for the day of August 16, 2012.

CONCLUSIONS OF LAW

1. The agency properly seeks to recover an overissuance of FS benefits in the amount of \$600 from the Petitioner for the period of February 1, 2012 through April 30, 2012 (Claim No. [REDACTED]).
2. The agency has established an overissuance of FS benefits for a single day, August 16, 2012.
3. The agency has not established an overissuance of FS benefits during the period of August 17, 2012 through January 31, 2013.

THEREFORE, it is

ORDERED

With regard to the agency's overpayment action for the period of February 1, 2012 through April 30, 2012 (Claim No. [REDACTED]), the petitioner's petition is dismissed and the agency may take action to collect an overpayment of \$600 from the Petitioner.

With regard to the agency's overpayment action for the period of August 16, 2012 through January 31, 2013 (Claim No. [REDACTED]), the matter is remanded to the agency with instructions to rescind its overpayment claim against the Petitioner for the period of August 17, 2012 through January 31, 2013. Claim No. [REDACTED] shall be amended to reflect an overpayment solely for August 16, 2012, and a new notice and worksheet shall be generated and provided to the petitioner reflecting this amendment. All actions required hereunder shall be completed within 10 days of the date 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 17th day of May, 2013

\sPeter McCombs
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 May 17, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability