FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/148144

PRELIMINARY RECITALS

Pursuant to a petition filed March 20, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 17, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner was overpaid FS in October and November 2012, in the total amount of $400.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Katherine May, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner applied and was granted FS benefits as a household of one pursuant to a June 2012 application. He was issued $200 monthly through at least November 2012.

3. On January 17, 2013, the Department issued a *Notification of FS Overissuance* and worksheet to the petitioner. The *Notification* advised that the petitioner had been overpaid FS totaling $400 for the October 1, 2012 through November 30, 2012, period (claim #[redacted]). The basis for the overpayment was failure to report earned income.

4. The petitioner applied for FS in June 2012, when he was out of work. In July 2012, he supplied the agency with a letter advising that he would return to work in late August 2012. The petitioner returned to work at [redacted] on August 29, 2012, and began earning income at a level that made him ineligible for FS. He should have reported the earnings within 10 days (in September), which would have closed his FS case effective October 1, 2012. The petitioner actually reported the earnings on October 6, 2012. The Department should have discontinued his FS for November 2012, but failed to do so until December 1, 2012.

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 (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 10/1/12 – 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 he had provided all requested information to the agency, and that he did nothing wrong. However, as noted above, the agency must collect the overpaid benefits, even if the overpayment was caused by an innocent misunderstanding or mistake. This mandatory recovery is required under federal law, which means that a state official, such as myself and the county agency, must comply with that requirement.

CONCLUSIONS OF LAW

1. The petitioner was overpaid FS from October through November, 2012, primarily due to agency 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 10th day of May, 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 May 10, 2013.

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