



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/148285

PRELIMINARY RECITALS

Pursuant to a petition filed March 23, 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 April 18, 2013, by telephone.

The issue for determination is whether the petitioner was overpaid FS from November 1, 2012 through March 31, 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Deb Bohman, ESS

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.
2. Prior to November 2012, the petitioner headed a three person FS household consisting of herself, [REDACTED] and the petitioner's daughter (not a child-in-common). In October 2012, the petitioner reported to the agency that [REDACTED] had left the household, so the agency reduced her

case to two persons effective November 1, 2012. She reported [REDACTED]'s new address as 1510 N. Lawler, Chicago, Illinois.

3. After receiving some conflicting information in 2013, the agency authorized an investigation by contractor O'Brien & Associates, which was performed in February 2013. After interviewing the petitioner and viewing the interior of her residence (which contained adult male clothing and toiletries), the investigator concluded that [REDACTED] was residing with the petitioner.
4. The agency added [REDACTED] and his income to the case effective April 1, 2013, which caused the petitioner's case to close April 1, 2013, for excess income.
5. On March 14, 2013, the Department issued a *Notification of FS Overissuance* and worksheets to the petitioner. The *Notification* advises that the petitioner was overpaid \$1,355 in FS for the November 1, 2012 through March 31, 2013, period (claim # [REDACTED]).
6. [REDACTED] began factory employment at Brunswick in Fond du Lac on September 10, 2012. He continues to be employed there.
7. [REDACTED] was residing with the petitioner at her 689 E. Scott Street, Fond du Lac, address from November 1, 2012 through at least March 31, 2013.
8. [REDACTED] listed the petitioner's address as his own with his employer and for his court appearances/contacts on November 5, November 9 and November 30, 2012. He also listed this address with the child support agency on April 9, 2013.
9. The petitioner gave birth to a child-in-common with [REDACTED] in February 2013.

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 – 2/28/13 PERIOD.

The petitioner argues that she was not overpaid during the above period because [REDACTED] was not residing with her. She asserts that he lived in Chicago, even though he was employed in Fond du Lac throughout the alleged overpayment period. That assertion is not believable, and the petitioner’s testimony was not credible.

Of course, [REDACTED]’s mere presence does not automatically create an overpayment. He is employed, and it is the addition of his income that caused the household’s total income to exceed the gross income limit for a household of three, and possibly later on, for four. Those limits are currently \$3,182 for three, and \$3,842 for four. When the petitioner’s unearned income of \$822.77 was added to [REDACTED]’s monthly earnings, the total clearly exceeded \$3,182 from November through February. *I.e.*, [REDACTED]’s gross monthly income ranged from \$2,796 to \$3,009 during these months. Going forward, it is understandable that the agency averaged these amounts to determine future income eligibility, and therefore closed the case effective April 1, 2013.

However, this decision is an overpayment decision. The Department’s worksheet is defective regarding the amount of the March 2013 overpayment calculation. See, Exhibit 8. The worksheet attached to the *Notification* contains adequate overpayment computations for November through February. However, the “March” worksheet columns do not show [REDACTED]’s income, the actual household size (the baby was added to the case 2/26/13), or the applicable gross income limit. Instead, it is a column of zeroes. It is possible that this household’s gross income slipped under the gross income limit for four persons in March, and it is also possible that the household does not owe the entire issued allotment of \$271, as indicated on the worksheet. Federal FS regulations require that the *Notification* or its worksheet advise the petitioner how the overpayment claim was calculated. 7 C.F.R. § 273.18(e)(3)(iv). The documents presented do not show how the overpayment amount for March 2013 was calculated. Therefore the \$271 attributable to March must be deleted from this claim.

This decision does not bar the agency from issuing a new *Notification* and worksheet to the petitioner for March 2013 to re-commence recovery efforts for that month.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$1,084 (\$1,355 - \$271) in FS from November 2012 through February 2013.

2. The agency cannot proceed with recovery of an alleged \$271 overpayment for March 2013, due to failure to provide the petitioner with a calculation of the alleged March 2013 overpayment amount.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to reduce the petitioner's overpayment amount on claim # [REDACTED] from \$1,355 to \$1,084 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 19th day of April, 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 19, 2013.

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