



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149004

PRELIMINARY RECITALS

Pursuant to a petition filed April 29, 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 telephone hearing was held on June 03, 2013, at Fond Du Lac, Wisconsin.

The issue for determination is whether the petitioner was overpaid \$1,000.00 in FS from December 1, 2012, through April 30, 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 Bohlman

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Englewood, Florida.
2. The petitioner received FS as a household of one person from at least December 1, 2012, through April 30, 2013. He received \$1,000.00 in FS during that period. Exhibit 3.

3. The petitioner failed to report that he moved from Wisconsin to Florida, which created an overpayment of FS. He reported his relocation on March 28, 2013. Exhibit 2.
4. Petitioner was informed of his change reporting responsibilities at application (Exhibit 5, p. 8) and with the November 5, 2012, notice regarding a change in his benefit allotment (Exhibit 6).
5. On April 8, 2013, the agency issued a Notification of FS Overissuance and worksheet to the petitioner. That Notice advised that the petitioner had been overpaid \$1,000.00 in FS from December 1, 2012, through April 30, 2013 (claim # [REDACTED]).

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.

In this case, the agency presented convincing evidence that petitioner received Wisconsin FS benefits while he was not a Wisconsin resident. Wisconsin residency is a non-financial requirement for FS benefits. FoodShare Wisconsin Handbook, §3.2.1. Further, petitioner received FS benefits from both Wisconsin and Florida in March and April of 2013. Individuals may receive FS benefits on only one case at a time. FoodShare Wisconsin Handbook, §3.4.1. Per FS regulations, petitioner was required to report that he had moved to Florida within ten (10) days of his change of address. FoodShare Wisconsin Handbook, §6.1.1.1. He did not do so, and FS benefits continued following petitioner’s relocation. Therefore, the agency seeks to recover benefits for the period of December, 2012, through April, 2013.

At the hearing, the Petitioner testified that he lost his Wisconsin residence to foreclosure in November of 2012. A friend offered him a place to stay in Florida, and he took advantage of the offer. He stated that he contacted respondent at that time, and was informed that he could use his card out of state. In March, 2013, when he decided to remain in Florida permanently, he testified that he again contacted the respondent.

Residents may be temporarily absent from Wisconsin and retain Wisconsin FS eligibility if the absence does not exceed two calendar months after the month that the member lost Wisconsin. FoodShare Wisconsin Handbook, §3.2.1.2. Petitioner’s testimony concedes that his absence exceeded the limit. While he claims that he did not decide to permanently reside in Florida until March of 2013, the facts remain that he moved to Florida in November of 2012, and that his FS card was not used in Wisconsin after that date. FS rules place reasonable limits on how long a resident may be temporarily absent from the state. I do not question petitioner’s contention that any violation of FS rules was inadvertent, and not intentional. Unfortunately, FS overpayment rules require collection of overpayments regardless of fault or intention.

The agency has presented a copy of the FoodShare notice and worksheets demonstrating the computations of the overpayment at issue here. I reviewed those worksheets along with budget screens showing how the agency calculated the monthly FS allotments. The calculations of the agency are accurate based on the evidence presented.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner was overissued FS benefits in the amount of \$1,000.00 for the period of December 1, 2012 – April 30, 2013 based on the Petitioner's failure to timely report that he was no longer residing in Wisconsin.

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 28th day of June, 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 June 28, 2013.

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