



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/149503

PRELIMINARY RECITALS

Pursuant to a petition filed May 16, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on June 19, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the agency properly reduced the Petitioner’s FS benefits effective April 1, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On or about March 20, 2013, the Petitioner’s son completed a FS renewal for the Petitioner. He submitted medical bills with the renewal including three medical bills that had been paid prior to

their submission to the agency. The three bills were paid in 2012, prior to the Petitioner's certification period of April, 2013 – March, 2014.

3. On March 18, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be reduced from \$144/month to \$123/month effective April 1, 2013.
4. On May 16, 2013, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$149 per month. 7 C.F.R. §273.9(d)(1); FS Handbook (FSH) § 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FSH, § 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FSH, § 4.6.7.

The issue in this case is the medical expense deduction. The FSH provides the following guidance:

Allow previously acquired charges (not yet paid) and current payments when calculating a medical expense deduction. Previously acquired charges include charges incurred anytime before or during the certification period, as long as the individual has an agreement to pay the charges and is still obligated for the expense.

Past unpaid medical bills can be used to prospectively budget recurring medical expenses at application or recertification.

One time medical expenses (i.e. hospital bills) can be budgeted for one month or averaged over the remaining certification period.

Medical expense payments made during the certification period are allowable. Medical expenses paid prior to the certification period are not allowable.

FS Handbook § 4.6.4.1.

It is undisputed that the bills in question were paid by the Petitioner prior to the certification period. The Petitioner's son testified that he has been doing the Petitioner's FS applications and renewals since 2008. During that time, he contends he has submitted previously paid medical expenses and they were allowed by the workers. He argues that many providers require immediate payment. He also asserts that if previous workers had not allowed the medical expenses in prior years, he would have been aware of the policy and would have paid or submitted the bills differently.

The agency worker conceded that previous workers erred in allowing previously paid medical expenses. She contends that the error was not caught until this most recent renewal but that previous mistakes are not a basis to continue to apply the policy in error.

Petitioner is asking the Division of Hearings and Appeals to apply a type of equitable estoppel against the agency by asking it to estop the agency from applying the law regarding previously paid medical expenses to this case. Equitable estoppel generally cannot be imposed upon a government agency, *Milas v. Labor Association of Wisconsin, Inc.*, 214 Wis.2d 1, 571 N.W.2d 656 (1997); *Department of Revenue v. Moebius Printing Co.*, 89 Wis.2d 610, 279 N.W.2d 213 (1979). "[W]hen estoppel is asserted against the government, the party invoking it bears a heavy burden: the evidence must be so clear and distinct that the contrary result would amount to a fraud." *Kamps v. Department of Revenue*, 2003 WI App 106, ¶20, 264 Wis. 2d 794, 663 N.W.2d 306. The evidence in this case shows that the agency previously erred in allowing certain medical expenses in determining FS allotments for the Petitioner contrary to the law. An error in application of the law does not meet the burden.

I further note that an agency can recover benefits improperly paid to a client, regardless of whether it is agency error or client error. See 7 CFR §273.18. The error in previous years resulted in the Petitioner receiving more benefits than she otherwise might have been entitled to receive. It is not to the Petitioner's benefit to continue to receive FS benefits to which she is not, by law, entitled to receive as the law allows the agency to recover those benefits for up to 12 months prior to discovery of the error if an overissuance was the result of agency error.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner's FS benefits when it disallowed previously paid medical expenses.

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 Milwaukee,
Wisconsin, this 11th day of July, 2013

\sDebra Bursinger
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 July 11, 2013.

Kenosha County Human Service Department
Division of Health Care Access and Accountability