



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/151117

PRELIMINARY RECITALS

Pursuant to a petition filed July 31, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Trempealeau County Department of Soc Services in regard to FoodShare benefits (FS), a telephone hearing was held on September 09, 2013.

The issue for determination is whether the respondent has established an overpayment of FS benefits to petitioner for the period of June 1, 2012 – May 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: Tom Miller

Trempealeau County Department of Soc Services
36245 Main St.
PO Box 67
Whitehall, WI 54773-0067

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Trempealeau County, and the head of a 5 member FS assistance group.

2. A FS review interview was conducted on May 22, 2013. At that time respondent discovered that it had been calculating petitioner's FS benefits incorrectly. Specifically, respondent had been incorrectly allowing spousal maintenance as a child support expense. Exhibit 2.
3. The respondent issued a Notice of FoodShare Overissuance on July 19, 2013, asserting an overpayment in the amount of \$1,887.00 had occurred during the time period of June 1, 2012 to May 31, 2013. Exhibit 2.
4. Petitioner filed a timely appeal of the FS overpayment determination on July 31, 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. The

agency may look back six years to collect on client error cases, and one year from the month of discovery to collect on agency error cases. *Id.*, § 7.3.2.1.

II. THE PETITIONER WAS OVERPAID FS FOR THE JUNE 1, 2012 – MAY 31, 2013 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's household income is in dispute. Rather, the petitioner explained that he had done nothing wrong to warrant the imposition of this debt. He testified that his family is on a very strict budget, and that he simply cannot afford to repay this money, as a disabled veteran.

The respondent argues that it is simply following federal and state law regarding FS overpayments. Respondent concedes its error here, and notes that the overpayment period was limited to one year, since it was agency error. The respondent concurred with petitioner's contention that he was in no way responsible for the overpayment.

I have reviewed the respondent's calculations, and found no error. The petitioner has, in effect, argued that the program standard is unfair and that the administrative law judge should grant him relief from the program requirements. I empathize with the petitioner's situation. However, it is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, the petitioner is liable for the FS overpayment; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$1,887.00 in FS from June 1, 2012 to May 31, 2013, 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 27th day of September, 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 September 27, 2013.

Trempealeau County Department of Soc Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability