



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/151439

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a hearing was held on September 24, 2013, by telephone.

The issue for determination is whether the petitioner was overpaid FS of \$5,086 from June 22, 2010 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: Denise Jeffers, ES Supr.

Wood County Human Services - WI Rapids
320 West Grand Avenue
PO Box 8095
Wisconsin Rapids, WI 54495-8095

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Forest County.
2. The petitioner received FS as a household of two persons (self and spouse) from at least June 2010 through November 2011. She received FS as a household of three persons (self, spouse,

granddaughter DL) from December 2011 through August 2012, and as two persons (self, spouse) from September 2012 through March 2013.

3. On July 29, 2013, Notification of *FS Overissuance* letters and worksheets were sent to the petitioner, advising that she had been overpaid \$5,086 in FS for the 6/22/10 – 3/31/13 period (claims # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED], # [REDACTED]). Exhibit 2. The overpayment was due to client error.
4. On the June 2010 application, the petitioner correctly reported that she was receiving SSI benefits. She did not report to the county agency that her husband receives quarterly tribal per capita payments.
5. The husband's quarterly payment amounts ranged from \$1,210 to \$1,665 throughout the June 2010 through March 2013 period. *See*, Exhibit 1, tribal payment history. His income caused the household to be eligible for a smaller amount of FS than was received throughout the period. *See*, Exhibit 2, worksheets.
6. DL resided in the petitioner's household from *December 2011 through late July 2012*, and again from April 1, 2013 through August 2013. DL was employed and received earned income from May 25, 2012 through at least August 2012. DL's income was not timely reported to the agency. The petitioner did not report to the county agency that DL was out of the household until July 27, 2012. At that point, it was too late to reduce the household's FS for August 2012, so a too-large allotment (for three persons, rather than two) was issued.

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 6/22/10 – 3/31/13 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 testified that she had provided accurate income information regarding her husband to the Social Security Administration, so she thought the county agency was aware of his income.

The agency correctly noted that the petitioner had many opportunities on her Six Month Report Forms and annual reviews to list her husband's income, and she did not do so. The petitioner's testimony was not credible. The household has been overpaid as alleged by the agency.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$5,086 in FS from June 22, 2010 through March 31, 2013, due to client 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 30th day of September, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne ■ Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 30, 2013.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability