



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/152787

PRELIMINARY RECITALS

Pursuant to a petition filed October 10, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on November 07, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$477 for the period of August 1, 2012 – July 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kenneth Benedum

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. Petitioner's household size is two, consisting of Petitioner and her son.

3. On July 22, 2013, the Petitioner completed a FS renewal. The only household income is Petitioner's son's SSI. For the period of August, 2012 – January, 2013, the Petitioner received \$698/month in federal SSI. For the period of January, 2013 – July 31, 2013, the Petitioner received \$710 in federal SSI. For the period of August, 2012 – July 31, 2013, the Petitioner received \$83.78/month in state SSI.
4. During the renewal process, the agency determined that it had not budgeted the state SSI paid to Petitioner's son during the previous certification period of August 1, 2012 – July 31, 2013.
5. On July 24, 2013, the agency issued a Notification of FS Overissuance to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$477 for the period of August 1, 2012 – July 31, 2013.
6. On October 10, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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, Appendix 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, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

As decided in prior cases before the Division of Hearings and Appeals, "discovery" is “the date that the ESS [agency] became aware of the potential that an overissuance may exist.” BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the agency became aware of a potential for an overissuance in July, 2013 when it processed the renewal received in that month. Because the overpayment results from an agency error in failing to properly budget household income, the agency may recover overpayments within the previous 12 months. In this case, the agency seeks to recover for the period of August, 2012 – July, 2013 which constitutes the 12 months previous to discovery of the overpayment.

When a household receives more FS than it was entitled to receive, it must be recovered by the agency. FoodShare Wisconsin Handbook, 7.3.1.9. Here, the alleged overpayment occurred as a result of the agency failing to account for SSI income of \$83.78/month. The Petitioner does not dispute that her son received \$698/month in federal SSI for the period of August, 2012 – January 31, 2013 and \$710/month effective February 1, 2013. She does not dispute that during that period, he received \$83.78/month in state SSI. The Petitioner testified at the hearing that her son has a protective payee who receives his SSI. She testified that she gets \$300/month from the payee to cover rent and other expenses.

Unearned income of a household must be counted as income except when it is not available to the FS group. FS Handbook, 4.3.4.1. The petitioner argues that part of her son's SSI payments should be excluded in the FS calculation because that income is not actually available to her. However, the FS Handbook directs the agency to disregard income that is not actually available to the *group*. *Id.* The policy does not say to disregard income if it is unavailable to the *casehead*. Thus, if the dependent's benefits payment belongs to the son then the income is available to the son, who is a member of the Petitioner's FS group.

I reviewed the agency's worksheets and budget screens. The agency clearly did not count the state SSI when it budgeted only the federal SSI as unearned income in determining FS benefits for the period of August 1, 2012 – July 31, 2013. The agency properly determined that the Petitioner's household was

eligible for \$254 in FS benefits for August, 2012, \$232/month for the period of September – December, 2012, and \$227/month for the period of January – July 31, 2013. The Petitioner's household received \$292/month for August and September, 2012, \$270/month for October – January, 2013 and \$264/month for February – July 31, 2013. The agency properly determined a total overpayment of \$477 for the period of August 1, 2012 – July 31, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits to the Petitioner in the amount of \$477 for the period of August 1, 2012 – July 31, 2013.

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, Room 651, 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 3rd day of December, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 December 3, 2013.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability