



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/153278

PRELIMINARY RECITALS

Pursuant to a petition filed November 04, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 26, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$752 for the period of April 2, 2013 – April 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Yia Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On April 2, 2013, the Petitioner completed a FS renewal. Petitioner provided copies of pay statements at the time of renewal for Petitioner's wife's (NT) earned income indicating that NT's gross pay for the pay period March 3, 2013 – March 16, 2013 was \$1,599.60 and gross pay for

the period of March 17, 2013 – March 30, 2013 was \$1,524.33. Petitioner also reported income from child support of \$292.50/month for each of two children and unemployment compensation benefits of \$165/month. The agency failed to budget NT's earned income in determining eligibility and FS allotment for April, 2013 and budgeted only unearned income of \$1,294.50 for the household. Based on the inaccurate calculation of income, the agency approved \$821 in FS benefits for April, 2013 and issued FS benefits of \$793 for April 2, 2013 – April 30, 2013.

3. On April 3, 2013, the agency issued a Notice of Decision to the Petitioner informing him that he was approved for FS benefits of \$793 for April 2, 2013 – April 30, 2013 based on household income of \$1,294.50 for April. It further informed him that FS benefits would end effective May 1, 2013 due to household income exceeding the program limit.
4. On August 12, 2013, the agency received verification from [REDACTED] of Petitioner's employment at \$12.94/hour, averaging 25 hours/week. The verification also provided Petitioner's gross pay for the period of May, 2013 – August 9, 2013.
5. On or about August 12, 2013, the agency received verification from [REDACTED] of NT's employment at \$17.7882/hour, averaging 40 hours/week. The verification also provided NT's gross pay for the period of November 2, 2012 – February 22, 2013.
6. On August 22, 2013, the agency issued a Notification of FS Overissuance to the Petitioner informing him that the agency intends to recover an overissuance of \$752 for the period of April 2, 2013 – April 30, 2013.
7. On November 4, 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, § 7.3.2. Generally speaking, whose "fault" caused the overissuance 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.* Here, the alleged overpayment sought by the agency occurred 6 months prior to the discovery date. The overpayment is alleged to be a result of client error so the agency is within the time period to seek recovery.

In a fair hearing concerning the correctness of an overpayment of benefits, including the Food Share program, the burden of proof is on the agency. The agency must demonstrate a prima facie case establishing by the preponderance of the evidence that the overpayment occurred as determined, and must be recovered.

In this case, the overissuance is clearly the result of agency error. The Petitioner testified at the hearing that he does not dispute that the agency improperly calculated the household income for April and properly re-calculated the income for May. Because the household income exceeds the program limit, benefits were discontinued effective May 1, 2013. The Petitioner asserts that he should not be liable for agency error in miscalculating the household income for April, 2013.

The agency concedes it was an error on the part of the agency that resulted in an overissuance. It concedes the Petitioner properly reported income.

The federal regulations are clear that the agency is required to recover any overissuance of benefits regardless of whether the error is from the agency or client. If a recipient received benefits to which he was not entitled, the agency must recover those benefits if discovery of the error is within 12 months of the overissuance. In this case, the overissuance was in April and the discovery of the error was within 12 months. Therefore, the agency properly seeks to recover an overissuance of \$752 for the period of April 2, 2013 – April 30, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits in the amount of \$752 for the period of April 2, 2013 – April 30, 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 23rd day of December, 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 December 23, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability