



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/153820

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 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 January 02, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that the Petitioner was over-issued FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:



Respondent:

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

By: Yia Xiong, Income Maintenance Specialist II
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.

2. On December 8, 2011, Petitioner completed an on-line ACCESS application for FoodShare benefits. In that application, the Petitioner indicated he was homeless, but lived at [REDACTED] [REDACTED] (Exhibit 2, pgs. 20-21)
3. On November 15, 2012, someone identifying herself as Petitioner's sister indicated that the Petitioner was no longer at his reported address, that she did not know where Petitioner was living and that the agency should use the agency address for Petitioner. (Exhibit 2, pg. 10)
4. The agency address of 1220 West Vliet Street is used for homeless individuals or individuals who wish to receive their mail there. (Testimony of Ms. Xiong)
5. Also on November 15, 2012, the agency determined that the Petitioner was in [REDACTED] based upon his FoodShare card use. (Exhibit 2, pg. 10 and pg. 17)
6. On January 14, 2013, the agency sent a Notification of FoodShare Overissuance Claim Number [REDACTED] to a [REDACTED]. The case name was that of the Petitioner. (Exhibit 2, pg. 44)
7. The January 14, 2013 notice alleged that the Petitioner was over-issued FoodShare benefits in the amount of \$1049 for the period of December 8, 2011 to August 31, 2012. (Id.)
8. The Petitioner received Food Stamp benefits from [REDACTED] in the amount of \$16.00 per month between august 2011 and August 2012. (Exhibit 2, pg. 12)
9. The Petitioner is cognitively delayed and his full scale IQ falls into the range of mild mental retardation. The Petitioner is also hearing impaired. (Testimony of [REDACTED])
10. The Petitioner lived in [REDACTED] for a time and received FoodStamp benefits. The Petitioner then moved to Wisconsin in 2011 and applied for FoodShare benefits. The Petitioner ultimately moved to Minnesota on October 3, 2013. (Testimony of [REDACTED]; Testimony of Petitioner)
11. In November 2013, [REDACTED] assisted the Petitioner in applying for Food Stamps in Minnesota, but ran into difficulty because the Petitioner still had an open case in [REDACTED]. The Petitioner reported to [REDACTED] that he mailed his [REDACTED] Food Stamp card to a [REDACTED] state agency, because he thought that would close his [REDACTED] FoodStamp case. (Testimony of [REDACTED])

DISCUSSION

Timeliness

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FoodShare must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application, the reduction or termination of an ongoing case or the recoupment of an alleged overpayment.

In this case, the negative action is the agency's decision to seek recoupment of an alleged overpayment. The agency issued the notice of FoodShare Overissuance on January 14, 2013. However, it was sent to a Debra Conway at the agency address of 1220 West Vliet Street. It is the Petitioner's contention that he was not living in Wisconsin at that time and would not have received the notice.

Given that the overpayment notice was not even addressed to the Petitioner, it is found that the agency did not give the Petitioner adequate notice of the overpayment. Further, [REDACTED] Petitioner's social worker from Olmsted County Minnesota, testified credibly that the Petitioner did not receive the overpayment notice and that the Petitioner did not become aware of the overpayment until the end of

November 2013, when the Petitioner received a stack of forwarded mail from ██████████ which included from a notice from the United States Department of the Treasury indicating that a portion of the Petitioner's Social Security Disability Income would be withheld to satisfy a debt to the State of Wisconsin. (See Exhibit 1)

Given the lack of adequate notice regarding the overpayment, it is found that Petitioner's appeal is timely.

The alleged overpayment

"A person cannot be a member of more than 1 food unit and 1FS group in the same month, except residents of shelters for battered women and children...Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits." *FoodShare Wisconsin Handbook §3.4.1*

Petitioner does not dispute the fact that he applied for FoodShare benefits in Wisconsin in 2011, nor does he dispute the fact that he received \$1049 in FoodShare benefits from Wisconsin between December 8, 2011 and August 31, 2012. The Petitioner also did not dispute the fact that he was receiving FoodShare benefits from the State of ██████████ during the time in question. However, the Petitioner asserts that he thought his FoodStamp case in ██████████ had been closed when he mailed back his ██████████ FoodStamp card.

██████████ argued that Petitioner could not have applied for FoodShare benefits in Wisconsin without assistance, given his cognitive delays. However, it is undisputed that the Petitioner had family and a girlfriend in Wisconsin, and from the case comments it appears that the Petitioner's sister had contact with the agency. (See Exhibit 2, pg. 10) As such, he likely had their assistance in applying for benefits.

While it is clear that the Petitioner did not have any intention to defraud the FoodShare program, the fact remains that an overpayment occurred, because his ██████████ FoodShare case did not close before he began receiving benefits in Wisconsin.

Regrettably, the federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare 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), emphasis added; see also *FoodShare Wisconsin Handbook*, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment, it must be recouped.

CONCLUSIONS OF LAW

1. Petitioner's appeal is timely.
2. The agency correctly determined that the Petitioner was overissued FoodShare benefits between December 8, 2011 and August 31, 2012.

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

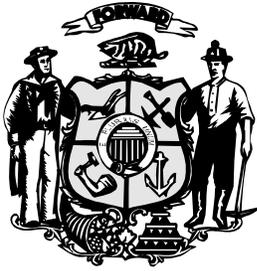
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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, 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 13th day of January, 2014

\sMayumi M. Ishii
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 January 13, 2014.

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