



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/154117

PRELIMINARY RECITALS

Pursuant to a petition filed December 13, 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 09, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$2,630 for the period of May 16, 2013 – October 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: Belinda Bridges

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 # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is providing foster care to minor child KV.

3. On May 15, 2013, the Petitioner requested child care benefits for KV. Petitioner was informed that she could also receive FoodShare and healthcare benefits for KV. Case was pended until KV was removed from her mother's case.
4. Petitioner reported to the agency that she is employed at Bell Therapy and [REDACTED].
5. On May 23, 2013, the agency issued a notice of decision to the Petitioner informing her that her application for FS benefits was approved. It informed her that she would receive \$189 for May, 2013 and \$367/month effective June 1, 2013. Household size was two. The notice stated that there is no income on file for the household.
6. On May 31, 2013, the agency issued a notice of decision to the Petitioner informing her that her FS benefits will increase to \$526/month effective June 1, 2013. Household size was three. The notice stated there is no income on file for the household.
7. On August 13, 2013, the agency discovered that it had failed to properly include Petitioner's income in determining eligibility for FS benefits.
8. On or about October 30, 2013, the agency received an employment verification form from [REDACTED] indicating the Petitioner works 16.5 hours/week at \$9.60/hour. [REDACTED] also supplied a Compensation Detail to the agency with actual wages earned by the Petitioner for the period of April, 2013 – October, 2013.
9. For the 2nd quarter of 2013, the Petitioner earned gross wages of \$7,984.06 from Bell Therapy. For the 3rd quarter of 2013, the Petitioner earned gross wages of \$8,138.11 from Bell Therapy.
10. On December 5, 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 \$2,630 for the period of May 16, 2013 – October 31, 2013.
11. On December 13, 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 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, FS Handbook, § 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FS Handbook, § 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. Id.

The "discovery" date is "the date that the 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 evidence in the case comments indicates that the agency became aware of a potential overpayment on August 13, 2013. The agency concedes that there was an agency error in budgeting the Petitioner's income.

The agency error occurred at the time of application for benefits. The Petitioner testified that she initially intended to apply only for child care benefits for KV. Because KV is a foster child, the Petitioner's income is not budgeted in determining eligibility for child care benefits for KV. The agency entered Petitioner's income as \$0 in order to open child care benefits. The agency then mistakenly informed the Petitioner that she was also eligible for FS benefits. The \$0 income that was entered for child care benefits was incorrectly budgeted in determining FS eligibility and allotments. The Petitioner does not

dispute that she had earned income during the overpayment period that was over the program limit. Her position is that she should not be responsible for repaying the overissuance based on the agency's error.

The FS regulations are clear that the agency must recover any overissuance due to agency error within 12 months of the discovery date. In this case, the agency discovered the potential overpayment in August, 2013. I recognize the Petitioner's frustration with regard to the error; however, because she was not entitled to the benefits that were issued, the FS regulations require the agency to recover the benefits. I note that the fact that KV is a foster child does not impact the determination of Petitioner's eligibility for FS benefits in this case. The Petitioner's earned income must be counted in determining the household's eligibility and her earned income was over the program limit. FS Handbook §§ 4.3.2 and 3.6.2.

I reviewed the agency's calculations of the Petitioner's income and I reviewed the worksheets. The Petitioner's income was over the program limit for FS benefits in each month of the overissuance period. The agency correctly seeks to recover an overissuance of FS benefits in the amount of \$2,630 for the period of May 16, 2013 – October 31, 2013.

CONCLUSIONS OF LAW

The agency correctly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$2,630 for the period of May 16, 2013 – October 31, 2013.

THEREFORE, it is **ORDERED**

That the Petitioner's appeal 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 6th day of February, 2014

\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 February 6, 2014.

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