



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/154426

PRELIMINARY RECITALS

Pursuant to a petition filed December 23, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on January 28, 2014, at Green Bay, Wisconsin.

The issue for determination is whether the petitioner was overpaid \$20,524 in FS from October 2009 through August 2013 (non-continuous).

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: Diane Van Asten, fraud investigator
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. The petitioner received FS for household of seven persons (self, husband and children) from at least October 2009, through August 2013.

3. On December 13, 2013, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$20,524 in FS for the 10/1/09 – 8/31/13 period (claims # [REDACTED], [REDACTED], [REDACTED], [REDACTED]). Exhibit 1-A, 1-B. The overpayment was due to client error.
4. The petitioner's FS household included her husband throughout the overpayment period, as the husband was residing in the household throughout the period. There is no dispute that the husband received income ranging from \$5,295 to \$10,932 during every overpayment month in the overpayment period date range. This caused the household to be ineligible for FS in such months. Exhibit 1B.
5. The petitioner asserts that she was unaware of her husband's additional income. He has been criminally charged in connection with acquiring this income; the petitioner has not been charged. *See*, CCAP for Brown Co. Case No. [REDACTED], featuring 10 counts of theft through false representation. The family was evicted from their residence in December 2012 by Venture Property Management. *See*, Brown Co. Case No. [REDACTED].

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 10/1/09 – 8/31/13 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's household income is in dispute. It is clear that the household was overpaid the amount of FS alleged. There is no assertion that the overpayment was attributable to an error made by the county agency.

The petitioner argued that her husband is a con man, and that he never shared his excess income with her or their children. She points to the fact of their eviction as evidence of his lack of sharing. Nonetheless, FS overpayments are required to be recovered. The federal rule says that spouses residing together at the time of the overpayment are jointly liable for repayment. *See*, 7 C.F.R. § 273.18(a)(4)(i), above. That is the case here, and the petitioner remains jointly liable for this FS overpayment.

The petitioner also appealed from a BadgerCare Plus overpayment. That decision will be issued separately, as different rules apply.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$20,524 in FS for the 10/1/09 – 8/31/13 period, 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, 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 Madison,
Wisconsin, this 4th day of February, 2014

\sNancy J. Gagnon
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 February 4, 2014.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability