



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/154674

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 13, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on February 5, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner was overpaid FS of \$70.50.

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: Nadine Stankey, auditor  
Public Assistance Collection Unit  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

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

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner received FS from at least May through October, 2012.
3. In October 2013, the Department issued an *Administrative Disqualification Hearing Notice* to the petitioner, advising that a FS intentional program violation hearing was scheduled for him on

November 12, 2013. The November 12 hearing was conducted by Administrative Law Judge Schneider of this office, and the petitioner did not appear.

4. In November 2013, Judge Schneider issued a decision that sustained the Department's position that the petitioner above had engaged in FS trafficking, and that he should be disqualified from the FS program for one year. Decision No. FOF/152030 (Wis. Div. of Hearings & Appeals November 15, 2013)(DHS). The petitioner did not contact that judge within 30 days of November 25 to argue that he had not received his hearing notice.
5. On December 4, 2013, the Department issued written notice to the petitioner advising that he had been overpaid by \$70.50, which is the amount of FS that he allegedly trafficked.
6. The \$70.50 overpayment amount is the total of two suspicious transactions that occurred on October 7 (\$52.00) and October 8 (\$18.50), 2012. The transactions occurred at [REDACTED], a convenience store that has been sanctioned by the federal government for FS trafficking. The petitioner lived more than four miles from [REDACTED]. Transactions at the same store in April, July, and December 2012 were not included in the overpayment amount because they did not fit the Department's criteria for suspicious transactions.

### DISCUSSION

The Department is required to make an Intentional Program Violation (IPV) determination for a recipient's behavior if it includes:

1. Making false or misleading statements or misrepresenting, concealing or withholding facts to become eligible or to remain eligible for benefits, or
2. Committing any act that constitutes a violation of FoodShare regulations or state statutes relating to the use, presentation, transfer, acquisition, receipt or possession of FS, i.e., trafficking FS.

*See, FoodShare Wisconsin Handbook (FSWH), § 7.3.2.4.*

If the Department believes that an IPV has been committed, it schedules an IPV hearing before a state Administrative Law Judge. That was done here. Following that hearing, the Administrative Law Judge issues a decision that either sustains or reverses the recommended IPV sanction. In this case, the Judge sustained the sanction, which allows the sanction to go forward.

This hearing has to do with the Department's determination that it can recover the \$70.50 in benefits that the petitioner trafficked in October 2012. The Department met its burden of establishing, by a preponderance of the credible evidence, that the value of the FS trafficked by the petitioner was \$70.50. The federal rule requires of the Department that "all intentional program violation claims must be established and collected in accordance with the procedures set forth in § 273.18 [the overpayment collection rule]." Thus, I conclude that the Department may proceed with collection efforts for the \$70.50.

### CONCLUSIONS OF LAW

1. The Department may proceed with collection efforts for the \$70.50 trafficked by the petitioner in 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 Madison,  
Wisconsin, this 12th day of March, 2014

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\sNancy J. Gagnon  
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 March 12, 2014.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability