



FH
[REDACTED]

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

In the Matter of

[REDACTED] M. [REDACTED]
[REDACTED]
[REDACTED]

DECISION ON REHEARING

FOP/154707

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2014, 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 February 12, 2014, at Milwaukee, Wisconsin. Following issuance of the Decision, the petitioner timely requested a rehearing to challenge the amount of the overpayment. The rehearing request was granted, and this Decision on Rehearing captures the overpayment reduction. Changes from the original Decision are italicized.

The issue for determination is whether the petitioner was overpaid FS for the October 17, 2012 through September 30, 2013 period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] M. [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Post-Hearing Representative:

Attorney Patricia DeLessio
230 West Wells Street, Room 800
Milwaukee, WI 53203

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Yia Xiong, ES Spec 2
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner received FS as a household of one person from at least November, 2010, through March, 2011.
3. On April 4, 2011, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that he had been overpaid \$2,296 in FS for the 10/17/12 – 9/30/13 period (claim # [REDACTED]). Exhibit 2. The overpayment was due to client error.
4. The petitioner was under the age of 22 during the overpayment period. He asserted that he lived alone at [REDACTED], Milwaukee, on his October 17, 2012 application. Accordingly, the Department counted only his income (zero) when his benefit level was determined. Exhibit 5, application. This persisted until October 1, 2013.
5. The petitioner's parents currently live and did live throughout the overpayment period at the same address of [REDACTED], Milwaukee. Because the petitioner was under age 22, he needed to be included in their FS household. When the petitioner's parents applied for FS on October 2, 2013, they listed the petitioner as a member of their household.
6. The petitioner lived with his parents at [REDACTED], Milwaukee, during the overpayment period.
7. *As a follow-up to the petitioner's rehearing request, the agency reduced the overpayment to \$492.*

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. There is a time limit, however, for how far back in time the agency may go if the overpayment was due to agency error.

II. THE PETITIONER WAS OVERPAID FS FOR THE 10/1/12 – 9/30/13 PERIOD.

Neither the arithmetic of the agency’s overpayment determination nor the amount of the petitioner’s income is in dispute. Rather, the petitioner explained that he was not living with his parents during the overpayment period.

The petitioner could not identify the alternate address at which he claims to have been living. All he could say was that he was living with an uncle “near a park.” He had no credible explanation as to why his parents would list him as a household member when they applied for FS in October 2013. The petitioner’s assertions and testimony are not credible. Therefore, I concluded that he was living with his parents. Federal FS rules require that a person under age 22 and living with his parents, must include the parents and their income in his FS household. *FSWH*, § 3.3.1.3; 7 C.F.R. § 273.1. The petitioner’s incorrect application caused the overpayment alleged here.

In his rehearing request, the petitioner asserted that the agency erred in its calculation of the overpayment amount, by failing to combine the petitioner with his two parents, and compute the FS allotment that should have been issued as a household of three persons. Before this Administrative Law Judge reviewed the matter, the agency took the initiative to review its computation in accord with the petitioner’s assertion. As a result, the agency canceled the prior overpayment claim (# [REDACTED] 9), and issued a new overpayment claim (# [REDACTED]) for the same period for \$492. In a letter dated March 14, 2014, petitioner’s counsel advised that she did not object to this amount and requested a rehearing decision that concludes that \$492 is the correct amount. Because the agency has already taken the action, the petition is not remanded to the agency for further action.

CONCLUSIONS OF LAW

1. *The petitioner was overpaid \$492 FS from October 2012 through September 30, 2013, 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.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 21st day of March, 2014

\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 21, 2014.

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