



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/155000

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Langlade County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on May 21, 2014, at Antigo, Wisconsin.

The issue for determination is whether the Department erred in its determination of a \$969 FS overissuance to petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Rhonda Strandberg
Langlade County Department of Social Services
1225 Langlade Road
Antigo, WI 54409-2795

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Langlade County.
2. Petitioner was a recipient of FS.
3. Due to agency error, the agency budgeted an incorrect amount of W-2 income to petitioner. This resulted in petitioner receiving more FS than to which she was entitled.

4. The agency sent notice to petitioner on 1/3/14 informing her of the overissuance.
5. Petitioner appealed.

### 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, Appendix 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 FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

As decided in prior cases before the Division of Hearings and Appeals, “discovery” was not the date of referral of a likely overpayment for investigation; discovery is the date when the agency actually determines an overpayment of a fixed amount occurred, and sends a notice to the FS recipient. Overpayments due to client error may be recovered for up to 6 years prior to discovery. However, a recent April 4, 2012 BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012), indicates that the “discovery” date is not the county agency’s FS Overpayment Notice, but instead the “the date that the ESS became **aware** of the potential that an overissuance may exist.” In this case, that date appears to be sometime during December 2013 or January 2014.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

During the hearing, petitioner did not dispute the agency error or that she was overissued FS. Petitioner simply argued that to now seek recovery of the non-client overpayment is unfair because the FS overpayment was not petitioner’s fault, as it was caused entirely by agency error. The petitioner’s contention is understandable. The petitioner also explained that it will be a financial hardship to repay the FS overpayments. However, since the April 2013 to July 2013 FS overpayment was created during the 12-month period, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless **of whose error caused the overpayment to occur**: “The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .” 7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, 7.3.2.1. Accordingly, for the above reasons, the county agency is correctly seeking recovery of the FoodShare overpayment.

### CONCLUSIONS OF LAW

The Department did not err in determining the overissuance even though it was caused by error of the agency.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 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 22nd day of May, 2014

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\sJohn P. Tedesco  
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 May 22, 2014.

Langlade County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability