



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/155072

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 27, 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 20, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner was overpaid FS due to an intentional program violation (IPV).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received FS from May 1, 2012 through October 31, 2012.

3. In September 2013, the Department issued an *Administrative Disqualification Hearing Notice* to the petitioner, advising him that he was alleged to have committed an FS intentional program violation (IPV).
4. On November 21, 2013 the IPV hearing was conducted by this ALJ.
5. On December 2, 2013, this ALJ issued a decision that sustained the Department of Health Services' position that this petitioner had engaged in FS trafficking during the alleged time period, and that he should be disqualified from the FS program for one year. Decision No. FOF/151555 (Wis. Div. of Hearings & Appeals December 2, 2013)(DHS).
6. By a notice dated December 4, 2013 the agency informed petitioner that he was overpaid \$39 in FS (claim no. [REDACTED]) due to an intentional program violation resulting from the November 21, 2013 hearing and the decision upholding the agency's position.

### **DISCUSSION**

An FS overpayment occurs when FS benefits are overpaid to a recipient or when FS benefits are trafficked by an FS recipient. 7 CFR 273.18(a)(1). The State FS agency must establish and collect any FS overpayment claim. 7 CFR 273.18(a)(2). There are three types of claims: (1) Intentional Program violation (IPV) claim, (2) Inadvertent household error (IHE) claim, and (3) Agency error (AE) claim. 7 CFR 273.18(b)(1). See also, in accord, *FS Wisconsin Handbook (FSWH)*, §7.3.1.1 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.)

Here, the Department of Health Services has alleged an IPV claim against the petitioner. An IPV claim is defined as any claim for an overpayment or trafficking resulting from an individual committing an IPV. 7 CFR 273.18(b)(1). In calculating the claim amount for an IPV claim, the claim must be calculated back to the month the act of IPV first occurred. 7 CFR 273.18(c)(1)(i). Claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by: (1) the individual's admission; (2) adjudication; or (3) the documentation that forms the basis for the trafficking determination. 7 CFR 273.18 (c)(2). In this case, the agency determined the value of the trafficked benefits to be \$39 as it was adjudicated in Decision No. FOF/151555 (Wis. Div. of Hearings & Appeals December 2, 2013)(DHS) that petitioner trafficked his FS during the period of May 1, 2012 through October 31, 2012 at T & J Grocery Store.

The petitioner did not dispute the calculations, but rather, attempted to relitigate the IPV hearing by arguing about how he spent his FS at T & J Grocery Store. However, that matter has been adjudicated and he does not get to relitigate the merits of the IPV here. The legal doctrine of "claim preclusion" bars his attempt for a second "kick at the cat". The instant petition must be dismissed.

### **CONCLUSIONS OF LAW**

Petitioner was overpaid \$39 in FS due to an IPV.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be 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 March, 2014

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\sKelly Cochrane  
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 6, 2014.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
Attorney Patricia Delessio