



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
FOP/155073

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 March 11, 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: Erica Dresen
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Kelly Cochran
Division of Hearings and Appeals

FINDINGS OF FACT

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

3. In September 2013, the Department of Health Services issued an *Administrative Disqualification Hearing Notice* to the petitioner, advising her that she was alleged to have committed an FS intentional program violation (IPV).
4. On November 12, 2013 the IPV hearing was conducted by this ALJ.
5. On December 3, 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 she should be disqualified from the FS program for one year. Decision No. FOF/152361 (Wis. Div. of Hearings & Appeals December 3, 2013)(DHS).
6. By a notice dated December 23, 2013 the agency informed petitioner that she was overpaid \$181.72 in FS (claim no.) due to an intentional program violation resulting from the November 12, 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 overpayment 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 that the act of the 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 \$181.72 as it was adjudicated in Decision No. FOF/152361 (Wis. Div. of Hearings & Appeals December 3, 2013)(DHS) that petitioner trafficked her FS during the period of July 1, 2012 through October 31, 2012 at RPZ Convenience Store (FNS #0314004).

The petitioner did not dispute the calculations, but rather, raised questions about how FNS determined it was disqualifying RPZ and how the Department of Health Services used FNS information. Having no evidence to show the overpayment is incorrect here, the instant petition must be dismissed.

CONCLUSIONS OF LAW

Petitioner was overpaid \$181.72 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 20th day of March, 2014

\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 20, 2014.

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