



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155619

PRELIMINARY RECITALS

Pursuant to a petition filed February 20, 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 March 19, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner was overpaid FS for the November 1, 2012 through April 30, 2013, period.

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: Jose Silvestre - IM Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

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 as a household of one person from at least August 2012, through April 2013.

3. On February 10, 2014, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that he had been overpaid \$752 in FS for the 11/1/12 – 4/30/13 period (claim # [REDACTED]). The overpayment was due to “client error.” *See*, Exhibit 6.
4. The petitioner timely reported that his employment at [REDACTED] [REDACTED]’s ended in August 2012, and he verified the same. He then began a job at [REDACTED] [REDACTED] on September 25, 2012. He was also receiving Unemployment Compensation (UC). *See*, Exhibits 2, 3.
5. The petitioner then failed to report the beginning of his job and income from [REDACTED] [REDACTED]. Program rules required the reporting of a new job/income within 10 days. FS benefits were issued to him for November 2012 through April 2013, without inclusion of the earned income in the allotment calculation. The benefits were \$128 monthly, based solely on UC income. This created an overpayment.
6. On October 15, 2012, the Department issued written notice to the petitioner advising that his FS allotment would increase from \$16 to \$128, effective November 1, 2012. On the income page of that notice, the only income shown is \$199 weekly in UC. *See*, Exhibit 4.

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 (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. Agency-caused overpayment recoveries are limited, however, to going back one year from “discovery.”

II. THE PETITIONER WAS OVERPAID FS FOR THE 11/1/12 – 4/30/13 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 had reported the [REDACTED] [REDACTED] job to the agency within two weeks of its commencement, and that he did nothing wrong. He testified without corroboration that he reported the [REDACTED] [REDACTED] job on the Department’s website, and heard nothing further. The Department keeps contemporaneous business records (“Case Comments”) of such contacts, and has no record of the job being reported in any fashion – in person, via mail, via fax, or through the website. Further, if a new job is reported through the website, the Department automatically sends a verification request letter to the recipient. No verification request letter was generated from September 25, 2012 through April 15, 2013. Based on the evidence before me, I found that the petitioner did not report the [REDACTED] [REDACTED] job until sometime after April 2013, and I conclude that the overpayment may be collected from him.

CONCLUSIONS OF LAW

1. The petitioner was overpaid FS from November 1, 2012 through April 30, 2013, due to client error (failure to report new income).
2. The Department is correctly pursuing recovery of that overpayment, pursuant to federal law.

THEREFORE, it is

ORDERED

That the petition 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 17th day of April, 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 April 17, 2014.

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