



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

FOP/156695

PRELIMINARY RECITALS

Pursuant to a petition filed April 09, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services [MiLES] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on May 06, 2014.

The issue for determination is whether it was correct to establish the following 2 Claims against petitioner for overpayments of FS for the time period December 1, 2012 to February 28, 2014 in the total amount of \$4,168.00:

- (I) Claim Number [redacted]; December 1, 2012 to November 30, 2013; \$3,410.00; and,
(II) Claim Number [redacted]; December 1, 2013 to February 28, 2014; \$758.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pang Thao-Xiong, Income Maintenance Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

OTHER PERSONS PRESENT:

[redacted], petitioner’s son (25 years old)
[redacted], Hmong/English Interpreter

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. The County established the following 2 Claims against petitioner for overpayments of FS for the time period December 1, 2012 to February 28, 2014 in the total amount of \$4,168.00:
 - (I) Claim Number [REDACTED]; December 1, 2012 to November 30, 2013; \$3,410.00; and,
 - (II) Claim Number [REDACTED]; December 1, 2013 to February 28, 2014; \$758.00.
3. Petitioner had sons who lived with her during the time period in question and were part of her FS household; her sons had income.
4. The FS overpayment in *Finding of Fact #2*, above, resulted from the fact that the income of petitioner’s sons was not budgeted when calculating FS during the time period in question.

DISCUSSION

All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2011); See also, *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.1 & 7.3.2.1. Therefore, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault.

Petitioner does not deny that the income of her sons was not budgeted when calculating FS during the time period in question. She argues that the overpayment is unfair. She testified that she is elderly and did not know what to do. However, petitioner does not deny that her household included her son’s income for the time periods claimed by the County and that, for whatever reason, this income was not budgeted. This resulted in an overpayment. As noted above, all FS overpayments, regardless of fault, must be collected. Therefore, petitioner may be made to repay the above overpayment (even if it may not have been her fault).

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is liable for the FS overpayments detailed in *Finding of Fact #2*, above, and must repay them.

NOW, THEREFORE, it is

ORDERED

that the petition for review herein be and the same is hereby 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 29th day of May, 2014

\sSean P. Maloney
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 29, 2014.

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