



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/156946

PRELIMINARY RECITALS

Pursuant to a petition filed April 15, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Clark County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on May 6, 2014, by telephone.

The issue for determination is whether the petitioner was overpaid FS for the December 2012 through April 2013 period.

There appeared at that time 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: Bob Uebele, ES Spec.
Western Region EA Consortium

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Clark County.
2. The petitioner received FS as a household of two persons from at least October 2012 through April 2013.
3. On January 20, 2014, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that he had been overpaid \$1,640 in FS for the 12/1/12 – 4/30/13 period

(claim # [REDACTED]). Exhibit 1. The overpayment was identified as being client error – failure to report accurate household membership.

4. The petitioner timely submitted a Six Month Report Form (SMRF) on October 5, 2012, which declared a household of two persons (self and child), with the only income being child support. The petitioner married on October 31, 2012. The agency received no report of the marriage until February 27, 2013. On February 27, the petitioner's wife contacted the agency and reported that she and the petitioner had married in October 2012. The agency added her and her earned income to the case. When the wife's income was added to other household income for the months of December through April, the unfortunate result was that the household was not financially eligible for any FS during these months.

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, going back at least one year from discovery (February 2013). Overpayments caused by client error can go back for six years, per federal rule.

II. THE PETITIONER WAS OVERPAID FS FOR THE 12/1/12 – 4/30/13 PERIOD.

Neither the arithmetic of the agency's overpayment determination, his marriage in October 2012, nor the amount of the petitioner's household income is in dispute. Rather, the petitioner explained that he had reported his marriage to the agency in November 2012 (in person, at the Neillsville office), and that he did nothing wrong. However, as noted above, the agency must collect the overpaid benefits, even if the overpayment was caused by an innocent misunderstanding or mistake. This mandatory recovery is required under federal law, which means that a state official, such as myself and the county agency, must comply with that requirement.

CONCLUSIONS OF LAW

1. The petitioner was overpaid FS from December 2012 through April 2013, as was discovered in February 2013.
2. The county agency 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 7th day of May, 2014

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 7, 2014.

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