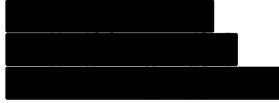




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/157420

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 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 July 17, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$332 for the period of July 12, 2012 – October 31, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On September 11, 2013, the agency issued an Administrative Disqualification Notice to the Petitioner at [redacted] informing her that the agency alleged

she had committed an Intentional Program Violation (IPV) of FoodShare (FS) regulations and that it intended to disqualify her from the FS program for one year.

3. On December 3, 2013, DHA issued a decision in Case No. FOF/152048 finding the Petitioner committed an IPV during the period of July – October, 2012. The decision was issued to the Petitioner at the [REDACTED] address.
4. On December 5, 2013, the agency issued a Notification of FS Overissuance to the Petitioner at the [REDACTED] address informing the Petitioner of the agency's intent to recover an overissuance of FS benefits in the amount of \$332.75 for the period of July 12, 2012 – October 31, 2012 based on the IPV. The notice also informed the Petitioner of the right to a hearing by filing an appeal with the Division of Hearings and Appeals within 90 days of the date of the notice.
5. On December 11, 2013, a Six Month Report Form was mailed to the Petitioner by the agency at the [REDACTED] address. Petitioner returned the form to the agency on December 19, 2013.
6. On May 6, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

A 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 Petitioner was adjudicated as having committed an Intentional Program Violation in DHA Case No. FOF/152048. 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 \$332 as it was adjudicated in Decision No. FOF/152048 (Wis. Div. of Hearings & Appeals December 3, 2013) that Petitioner trafficked her FS benefits during the period of July, 2012 through October 31, 2012 at [REDACTED].

The Petitioner did not dispute the calculations, but rather, attempted to dispute the IPV claim. Specifically, the Petitioner claimed that she never received notice of the IPV and never received the DHA decision regarding the IPV. The Petitioner testified that she had moved to a new address and the agency sent the notices to an incorrect address. Therefore, she claims that she did not have an opportunity to appear for the hearing and testify on her own behalf. She also claims that she did not know about the DHA decision and could not file for a rehearing. Further, she claims she did not receive the Notification of FS Overissuance from the agency dated December 5, 2013.

The agency noted that it sent the IPV disqualification and hearing notice to the Petitioner's address of record on September 11, 2013. This was also the address to which the DHA decision was sent. I take administrative notice of the fact that the DHA decision was not returned to the agency as "undeliverable" mail. Therefore, the presumption is that it was received. The agency also did not receive the hearing notice back as "undeliverable" mail. The agency also testified that it sent a Six Month Report Form to the Petitioner on December 11, 2013 per her request to the [REDACTED] address and the Petitioner returned

that form to the agency on December 19, 2013. I reviewed the correspondence and case notes regarding this Six Month Report Form to verify the agency's testimony.

As for the IPV, that matter has been adjudicated and the Petitioner cannot relitigate the merits of the IPV in this case. The legal doctrine of "claim preclusion" bars an attempt to re-litigate that issue in this context. The Petitioner's appeal letter did indicate that she wished to dispute the IPV decision and the Petitioner will receive a separate notice or decision regarding that dispute.

With regard to the overpayment issue, based on the evidence presented, I conclude that the Petitioner's appeal is untimely. A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of an action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). The Petitioner's appeal was filed 152 days after the date of the action on December 5, 2013. Thus, it was untimely, and no jurisdiction exists for me to consider the merits of the case.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal is untimely.

**THEREFORE, it is** **ORDERED**

That the Petitioner's appeal is 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 31st day of July, 2014

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\sDebra Bursinger  
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 July 31, 2014.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability