



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/157436

PRELIMINARY RECITALS

Pursuant to a petition filed May 6, 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 July 9, 2014, at Milwaukee, Wisconsin. A hearing set for June 4, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner was overpaid FS from April through September 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Formerly at:

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Belinda Bridges, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
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 February 2013 through September 2013.

3. On April 14, 2014, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$1,200 in FS for the 4/1/13 – 9/30/13 period (claim # [REDACTED]). The overpayment was due to client error.
4. The petitioner was employed by and earned wages from [REDACTED] [REDACTED] [REDACTED] from February 12, 2013, through at least September 2013. She earned an average of \$1,649 monthly. She did not report the income until August 21, 2013; at that time she reported wages of \$14.00 hourly, at 45 hours bi-weekly, or \$1,354.50 monthly. After subtraction of the FS standard deduction of \$149, the petitioner’s income was clearly over the \$958 FS net income limit for one person.

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 (viewable 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. There is a one-year time limit, however, for how far back in time the agency may go if the overpayment was due to agency error.

II. THE PETITIONER WAS OVERPAID FS FOR THE 4/1/13 – 9/30/13 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 she had provided all requested information to the agency. Specifically, she testified that she appeared at the Vliet Street agency in mid-March 2013 to report her wages. The agency has no record of that contact; the agency workers are supposed to record such contacts in their "Case Comments" database.

On March 27, 2013, the Department issued written notice to the petitioner advising that it had received her Six Month Report Form (SMRF), and that the SMRF showed income only from Cameo Care (\$7.25 hourly/\$810.55 monthly). On March 28, 2013, the Department issued written notice to the petitioner, advising that it had no record of income for her, and that she would therefore receive the \$200 maximum FS monthly allotment going forward. Exhibit 3. The petitioner did not contact the Department to correct this misinformation. On July 26, 2013, the Department issued written notice to the petitioner, advising that she would continue receive \$200 in FS, because she had *no* income. Exhibit 8. On August 21, 2013, the petitioner filed another periodic review form with the Department. She reported the McAboy employment, which caused the case to close September 30 (August 21 was too late to end the benefit by August 31). FS rules require that the beginning of employment or significant wage increases be reported within 10 days. *FSWH*, § 6.1. The petitioner did not comply. The petitioner's hearing assertions and testimony are not credible.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$1,200.00 FS from April 1, 2013 through September 30, 2013, due to client error.
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 15th day of July, 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 July 15, 2014.

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