



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/157506

PRELIMINARY RECITALS

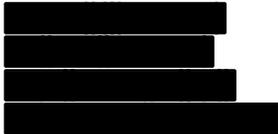
Pursuant to a petition filed May 07, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on June 12, 2014, at West Bend, Wisconsin.

The issue for determination is whether the Washington County Department of Social Services (the agency) correctly determined that the Petitioner was overpaid FoodShare benefits and if so, whether the agency may recoup the overpayment.

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: Kris Treesch, Economic Support Specialist
Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Washington County.

2. On April 2, 2014, the agency was processing an application for healthcare for the Petitioner when it discovered that it had not budgeted, for FoodShare purposes, interest income earned by the Petitioner and Petitioner's spouse, even though they had previously provided their income tax returns. (Exhibit 2, testimony of Ms. Treesch)
3. On April 15, 2014, the agency sent the Petitioner and Petitioner's spouse Notifications of FoodShare Overissuance for claim number [REDACTED], indicating that Petitioner was overpaid FoodShare benefits in the amount of \$1638 for the period of April 1, 2013 to January 31, 2014. (Exhibit 2, pgs. 4-9 and pgs.16-21)
4. On April 15, 2014, the agency sent the Petitioner and Petitioner's spouse Notifications of FoodShare Overissuance for claim number [REDACTED], indicating that the Petitioner was overpaid Foodshare benefits in the amount of \$522.00 for the period of February 1, 2014 and April 30, 2014. (Exhibit 2, pgs. 10-12 and pgs. 22-24)
5. The agency sent Petitioner and Petitioner's spouse repayment agreements on May 2, 2014. (Exhibit 2, pgs. 13-15 and pgs. 25-27)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 7, 2014. (Exhibit 1)

### DISCUSSION

The Petitioner did not contest the agency's income calculations, nor did the Petitioner contest the agency's calculation of the overpayment. Petitioner argued that the agency should not be allowed to recoup the overpayment because it was caused by the agency's failure to account for the interest income that was reported in the tax returns that the Petitioner previously provided to the agency. The Petitioner argued that there was no intent to defraud the FoodShare program.

The Federal regulations concerning FoodShare overpayments require the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also *FoodShare Wisconsin Handbook*, (FSH) § 7.3.2.1. As such, it does not matter whose error caused the overpayment, nor does it matter whether a recipient intended to cause an overpayment; it must be recouped.

However, whose error caused the overpayment does make a difference in terms of how far back the agency can recoup overpaid benefits.

The look back period for client errors begins with the date of discovery (the day the IM discovered the potential that an overissuance may exist) and extends backward:

1. Six years, or
2. To the month the change would have been effective had the group timely reported it, whichever is most recent.

...

The look back period for non-client errors begins with the date of discovery (the day the IM discovered the potential that an overissuance may exist) and extends backward:

1. Twelve months, or
2. To the month the error was effective had the change been acted on timely, whichever is most recent

*7 C.F.R. § 273.18(b); FSH § 7.3.2.1*

In the case at hand, it is undisputed that the subject overpayment was due to agency error. As such, the agency may only go back 12 months from the date of discovery, which according to the agency was April 2, 2014.

Consequently, the agency correctly determined that it can only recoup an overpayment from April 2013 forward.

**CONCLUSIONS OF LAW**

1. The agency correctly determined that the Petitioner was overissued FoodShare benefits.
2. The agency correctly determined that it must recoup the overissued benefits from the Petitioner.

**THEREFORE, it is**

**ORDERED**

That the petition 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 26th day of June, 2014

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\sMayumi M. Ishii  
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 June 26, 2014.

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