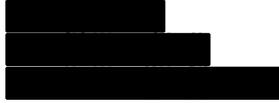




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/157814

**PRELIMINARY RECITALS**

Pursuant to a petition filed May 22, 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 June 19, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that the Petitioner was over-issued FoodShare benefits in the amount of \$1360.00 for the period of April 1, 2012 to April 30, 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: Katherine May, HSPC Sr.  
Milwaukee Enrollment Services  
1220 W. Vliet St., Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.

2. On April 29, 2014, the Division of Hearings and Appeals (DHA) issued a decision finding that the Petitioner committed an intentional program violation by trafficking his FoodShare benefits. (Exhibit 2, pg. 18)
3. The disqualification proceeding and DHA decision were based upon transactions that took place with John Henry Distribution, LLC on the following dates:

March 6, 2011	January 12, 2012
June 6, 2011	May 7, 2012.
August 6, 2011,	
September 6, 2011	
October 6, 2011	
December 7, 2011	

(Exhibit 2, pg. 16 and pg. 48; testimony of Ms. May)

4. On May 2, 2014, the agency sent the Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating that the Petitioner was overissued FoodShare benefits in the amount of \$1360.00 for the period of April 1, 2012 to April 30, 2012. (Exhibit 2, pg. 5)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 22, 2014. (Exhibit 1)

### DISCUSSION

According to the information contained in the Notification of FoodShare Overissuance, the agency seeks to recover an overpayment of \$1,360.00. The notice further indicates that the overpayment occurred between April 1, 2012 to April 30, 2012. However, none of the agency’s documents show that the Petitioner was issued \$1,360.00 for the month of April 2012.

On the contrary, the Food Stamp Issuance History Disbursement indicates the Petitioner was issued \$200 for the month of April 2012. (Exhibit 2, pg. 25) Further, the Transaction History and the April 29, 2014 DHS decision both indicate that April 2012 was one of the months in which the Petitioner did NOT traffic his benefits. (See Exhibit 2, pgs. 16 and 48)

Based upon the foregoing, it is found that the agency failed to meet its burden to show that the Petitioner was overissued FoodShare benefits during the month of April 2012.

At the hearing, it was explained that the agency decided to list only one month in the Notification of FoodShare Overissuance, instead of accurately identifying the months in which the alleged trafficking / overpayments occurred, because it would be too burdensome to issue manual notices, or to issue separate notices for each non-concurrent overpayment period. However, the fact that it was too burdensome for the agency to issue an accurate overpayment notice does not relieve the ALJ of the responsibility to examine the case, based upon the information as alleged in the Notification of Foodshare Overissuance. The Notification of FoodShare Overissuance is what frames the issues for the hearing.

It should be noted that one of the main purposes of the Notification of Foodshare Overissuance is to advise a person 1) that the agency is seeking to recoup an overpayment, 2) how much of an overpayment the agency is recouping, 3) the time -period in which the alleged over-issuance occurred and 4) why the over-issuance occurred. If the agency provides inaccurate information in the notice, the recipient cannot make an informed choice regarding whether to appeal, nor can the recipient adequately prepare for the hearing if he or she doesn’t fully know or understand the accusations being made.

**CONCLUSIONS OF LAW**

The agency did not correctly determine that the Petitioner was over-issued FoodShare benefits in the amount of \$1360.00 for the period of April 1, 2012 to April 30, 2012.

**THEREFORE, it is ORDERED**

That the agency rescind claim Number [REDACTED] and cease collection efforts. The agency shall take all administrative steps necessary to complete these tasks within 10-days of this decision.

**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 7th day of July, 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 July 7, 2014.

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