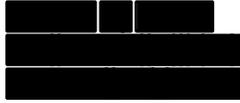




STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/157866

**PRELIMINARY RECITALS**

Pursuant to a petition filed May 23, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit (PACU) in regard to FoodShare benefits (FS), a hearing was held on July 10, 2014, by telephone.

The issue for determination is whether the petitioner was overpaid FS from February 1, 2013 through February, 2014.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Diane Peterson, PARIS agent  
Public Assistance Collection Unit  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Nebraska.
2. The petitioner received FS as a household of one person from at least September 2011, through July, 2013.

3. On May 16, 2014, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that he had been overpaid \$2,547.00 in FS for the 2/1/13 – 2/28/14 period (claims # [REDACTED], [REDACTED]). Exhibit 1. The overpayment was due to client error.
4. The petitioner lived at an address on [REDACTED], Milwaukee, from December 2011 through November 11, 2012. From December 2012 to May 2013, he resided with his daughter-in-law and others at [REDACTED], Milwaukee. His wife, [REDACTED], may have resided at that address also.
5. The petitioner’s bank card records reflect rental of a U-Haul truck on approximately May 23, 2013. The petitioner signed a lease (6/1/2013 – 5/31/2014) for a residence in [REDACTED], Nebraska on May 21, 2013. The petitioner’s mother is in failing health and resides in [REDACTED].
6. The petitioner did not report his move to Nebraska to the Department during the above overpayment period. He used his Wisconsin FS card in a Wisconsin versus Nebraska ratio as follows:
 

December 2012	Wis. 100%/Neb 0%
January 2013	Wis. 0% /Neb 100%
February 2013	Wis. 0% / Neb 100%
March 2013	Wis. 0% /Neb 100%
April 2013	Wis. 91%/ Neb 9%
May 2013	Wis. 17%/Neb 83%
June 2013	Wis. 50%/Neb 50%
July 2013	Wis. 0%/ Neb 100%
7. The overwhelming majority of the petitioner’s bank card usage is at banks/businesses in Milwaukee from January through April 2013. The transactions from May and June 2013 are primarily in Nebraska; the petitioner does not contest that he was primarily in Nebraska in May, and that he moved in by June 2013.
8. The petitioner resided in Milwaukee Wisconsin from February through May 2013.

**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 6/1/13 – 2/28/14 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 he did not move to Nebraska until May 2013, so the overpayment should only be for June 2013 onward.

The Department pointed to the petitioner’s exclusive or near exclusive use of his FS card in Nebraska in the months of January, February, March, May, June and July 2013. Normally, this FS usage pattern, the fact that the petitioner was not tethered to a job in Wisconsin, and the fact that he was not listed on any lease in Wisconsin for January through May, would be enough for me to conclude that he had moved to Nebraska in January, and that he was overpaid from February 2013 through February 2014.

However, the petitioner testified that his mother became ill in Nebraska, and that he traveled back forth between the two states over several months before deciding that he needed to move to Nebraska to be with her. This could have happened. He introduced evidence of rental of a U-Haul truck in May. It is unlikely that he would have rented this truck in May if he had moved his large possessions earlier. Further, the petitioner’s bank card transactions occurred overwhelmingly in Milwaukee from January through April 2013. The bank card receives the monthly deposit of the petitioner’s only known income source, Social Security. The petitioner credibly testified that he does not allow anyone else to use the bank card, as it is access to his only known income source. Finally, some of the months with “Nebraska-heavy” usage show usage on just a few dates, which could be consistent with visiting (*e.g.*, in February, all transactions occurred on February 21 and 23). All of this evidence caused me to conclude that the petitioner has produced evidence that at least equals that provided by the Department.

One curiosity that the Department pointed out is that there are some dates on which the petitioner used his bank card in Milwaukee, and that his FS card was also used in Nebraska : April 14 and several dates in May 2013. The petitioner professed to not know how that could have happened. I am skeptical of his

confusion; my suspicion is that he allowed someone else to use his FS card. However, that does not mean that he was overpaid on a “living out of state” theory. It does mean that the Department may pursue other sanctions if he allowed unauthorized persons to use his FS card; that is a subject for another day.

In the end, this case comes down to an evidentiary tie. Because the Department has the burden of proof by a preponderance of the credible evidence, I conclude that the petitioner was only overpaid FS for June 2013 through February 2014, on the “living out of state” theory. The overpayment will be reduced by the \$200 monthly FS issued during the four disputed months. This does not preclude the Department from recalculating the petitioner’s eligibility or allotment amount for February through May 2013, if it believes that the petitioner was residing with his wife in Milwaukee during that period. If the Department makes such a determination, it will have to issue a new overpayment notice to the petitioner for that period.

### **CONCLUSIONS OF LAW**

1. The petitioner was overpaid \$1,747.00 FS from June 1, 2013 through February 28, 2014, due to client error.
2. The Department is correctly pursuing recovery of the June 2013 through February 2014 overpayment, pursuant to federal law.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the Department with instructions to reduce the petitioner’s overpayment liability down to \$1,747.00, in accord with the Conclusions of Law above. This action shall be taken within 10 days of the date of this Decision. In all other respects, 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 the action occurred (e.g., Milwaukee County). 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 16th day of July, 2014

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\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 16, 2014.

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