



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158139

PRELIMINARY RECITALS

Pursuant to a petition filed June 03, 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 October 08, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

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: Adekunle Fajembola and Simone Johnson
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated May 20, 2014. It informed Petitioner that she had been overissued FoodShare benefits for the period from June 3, 2013 through November 30, 2013 in the amount of \$1175.00. This is claim number [redacted].
3. Petitioner was, at all times relevant here, a full time student at the University of Wisconsin – Milwaukee. She was also employed at least 20 hours per week until June 3, 2013. At that point Petitioner reported the loss of employment. She obtained new employment in June 2013 but was not

employed at least 20 hours per week during the overpayment period alleged here. All of this was correctly reported to the agency.

4. The basis for this FoodShare overissuance claim was agency error. The agency continued Petitioner's FoodShare eligibility even though she was a full time student who, with the employment changes, no longer met FoodShare eligibility requirements.

### DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a 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 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

Here there is no issue as to student status or the amount of income or the reporting of the income and student status. As noted in the Findings, the agency continued Petitioner's FoodShare eligibility during the overpayment period – a time when Petitioner was classified as a full-time student but not working at least 20 hours per week. Nonetheless, the Federal law governing the FoodShare program requires overpayment recovery regardless of who made the error.

The problem here is that Petitioner was a full time student and the law regulating the FoodShare program has fairly particular rules about FoodShare eligibility for students. A student enrolled in an institution of higher education can only non-financially qualify for FoodShare benefits in limited circumstances:

Anyone, age 18-49, enrolled half time or more, in an institution of higher education is ineligible, unless s/he meets one of the following criteria.

1. Employed at least 20 hours a week at any wage.
2. Self employed at least 20 hours a week with self employment earnings (after SE expenses are subtracted) equivalent to at least the federal minimum wage for 20 hours a week ( $\$7.25 \times 20 = \$145$  a week).
3. Both employed and self-employed at least 20 hours a week and earning at least the federal minimum wage for 20 hours a week ( $\$7.25 \times 20 = \$145$  a week). Earnings are based on self employment income (after SE expenses are subtracted) plus gross income from other employment.
4. Participating in a federal or state work study program.
  - Continue the exemption until the end of the month in which the school term ends, or the student refuses to do his assigned work. A student who has stopped working during the school year because the work study funding has run out would continue to be classified as an eligible student until the end of the school term.
  - The exemption does not cover school breaks of longer than one month, unless the student is participating in work study during the break.
5. Responsible for the care of a dependent household member under age 6. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.
6. Responsible for the care of a dependent household member who has reached age 6 but is under age 12 if the agency determines adequate child care is unavailable. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.

7. Is a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and is exercising care and control of a dependent food unit member under the age of 12. To apply this provision there must be only one biological or adoptive parent, or stepparent in the same food unit as the child. If there is no biological or adoptive parent or stepparent living with the child, another full-time student living with the child may qualify as an eligible student under this provision if the student has parental control of the child and does not live with his or her spouse.
8. Receiving a Tribal TANF [Temporary Assistance for Needy Families] cash payment, W-2 cash payment, or working in a W-2 Trial Job. Assigned to or placed in an institution of higher learning by WIA [Workforce Investment Act].
9. Enrolled in a W-2 employment position or other TANF funded program under Title IV of the Social Security Act.
10. Physically or mentally unfit for gainful employment. Verify the claim, if it's not clear. Receipt of temporary or permanent disability benefits, a statement from a physician, or certified psychologist is appropriate verification.
11. Participating in an on-the-job training program. This exemption applies only during the period of time the person is being trained by the employer.
12. Is assigned to or placed in an institution of higher education through or in compliance with the requirements of FSET [FoodShare Employment and Training].
13. Is enrolled in an educational program that is designed to be completed in 2 years or less and obtaining certification or a diploma from the program will lead to employment that is in demand.  
*FoodShare Eligibility Handbook (FSH), at §3.15.1.*

Also relevant here is the following:

- ...
- A student is enrolled as of the 1st day of the school term through normal scheduled class periods, vacation, and recess unless s/he:
1. Graduates.
  2. Is suspended, expelled, or drops out.
  3. Doesn't intend to register for the next school term (excluding summer school).
- FSH, §3.15.1.*

Petitioner asks that the overpayment be reversed because it occurred through no fault of her own. There is, however, nothing in the Federal law governing the FoodShare program or in the state and policy implementing it that permits such a reduction and the Division of Hearings and Appeals cannot ignore the law.

Finally, the following gives Petitioner an idea as to how the overissuance is collected:

#### **7.3.2.12 Repayments**

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments
  2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.
- FSH, §7.3.1.12.*

**CONCLUSIONS OF LAW**

That the evidence does demonstrate that Petitioner was overissued FoodShare benefits as alleged by the agency.

**THEREFORE, it is**

**ORDERED**

That this 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).

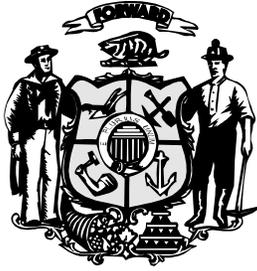
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 9th day of October, 2014

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\sDavid D. Fleming  
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 October 9, 2014.

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