



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158219

PRELIMINARY RECITALS

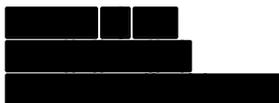
Pursuant to a petition filed June 10, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 9, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner was overpaid FS from December 2012 through September 2013.

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

ADMINISTRATIVE LAW JUDGE:

Nancy Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. The petitioner applied for FS on December 18, 2012, as a household of two persons. He reported the fact of his wife's employment and displayed paystubs at application. Even though a correct

computation of household income would have revealed that the household was not eligible due to excess income, the Department opened a FS case for the household in December 2012.

3. The FS case remained open through September 30, 2013. The petitioner reported his return to work (and higher income) to the Department in September, which caused the October 1, 2013 closure.
4. The household was ineligible for FS from December 2012 through September 2013, due to excess income.
5. The Department's "BVRF" benefit overpayment recovery printout (2 pages) shows a "referral" to start the overpayment determination process on February 7, 2014. *See*, Exhibit 3.
6. On February 10, 2014, the Department issued a *Notification of FS Overissuance* and worksheets to the petitioner (claim # [REDACTED]). The *Notification* alleges that the petitioner was overpaid FS from September 18, 2012, through September 30, 2013, of \$1,833 (the total of all FS issued during the period).
7. On March 19, 2014, [REDACTED] of the Department's MiLES office issued a letter the petitioner advising that the Department had concluded that the overpayment was caused by agency error.

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 (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. However, agency error claims are limited to a one year period from the date of discovery.

II. THE PETITIONER WAS OVERPAID FS FOR THE 12/18/12 – 9/30/13 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's household income is in dispute. Rather, the petitioner explained that he had provided all requested information to the agency, and that he did nothing wrong. However, as noted above, the agency must collect the overpaid benefits, even if the overpayment was caused by an innocent misunderstanding or mistake. This mandatory recovery is required under federal law, which means that a state official, such as myself and the county agency, must comply with that requirement.

However, because this is an agency error case, and the best evidence I have of the "discovery" date is the February 7, 2014 BVRF referral date, there can be no collection from the petitioner for the overpayment amounts attributable to December 2012 (\$87) and January 2013 (\$194).

CONCLUSIONS OF LAW

1. The petitioner was overpaid FS from 12/18/2012 through 9/30/2013, due to agency error.
2. The agency is correctly pursuing recovery of the overpayment for February 2013 through September 2013, pursuant to federal law.
3. The agency may not recover the \$281 paid from December 2012 through January 2013.

THEREFORE, it is

ORDERED

That the petition is *remanded* to the agency with instructions to reduce the petitioner's overpayment amount on claim # [REDACTED] from \$1,833.00 down to \$1,552.00 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 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 11th day of July, 2014

\sNancy ■ 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 11, 2014.

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