



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/158910

PRELIMINARY RECITALS

Pursuant to a petition filed July 08, 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 30, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department met its burden to support its determination of the Foodshare overissuance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



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Respondent:

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

By: Mr. Fajembola

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. Petitioner was issued a FS overissuance notice on 5/22/14 reflecting an overissuance of \$1,496 for the period from April 2013 to November 2013.
3. Petitioner appealed.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS 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), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

As decided in prior cases before the Division of Hearings and Appeals, “discovery” was not the date of referral of a likely overpayment for investigation; discovery is the date when the agency actually determines an overpayment of a fixed amount occurred, and sends a notice to the FS recipient. Overpayments due to client error may be recovered for up to 6 years prior to discovery. However, a recent April 4, 2012 BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012), indicates that the “discovery” date is not the county agency’s FS Overpayment Notice, but instead the “the date that the ESS became **aware** of the potential that an overissuance may exist.” In this case, that date appears to be sometime during May 24, 2012.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, the agency’s presentation was disjointed, illogical, and incomplete. And, petitioner disputed much of what the agency alleged. At the time of hearing, the agency had not submitted complete documentation to support the claim. The agency representative explained that the complete copy of documentation was in their possession but the agency employee who provided the documentation to DHA failed to upload the complete packet of documentation. At the time of hearing, I had no overissuance notices, overissuance worksheets, income information, etc. By the end of the presentation, I did not understand the agency’s position. The agency submitted documentation following the hearing but I was unable to ask the agency questions about it and the pertinence or persuasiveness of much of it was not clear without further explanation. For example, the transaction record of an EBT card was provided but I could not then question petitioner about the charges to that EBT card which she had credibly denied at hearing.

Petitioner may indeed have been overissued FS. But, the agency must present a persuasive case at hearing. It is not the responsibility of the ALJ to try to reconstruct after the hearing what the agency’s case should have been. The agency failed to meet its burden.

CONCLUSIONS OF LAW

The agency failed to meet its burden at hearing to support the determination of an overissuance.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and the county agency with instructions to reverse the determination of the overissuance in claim # [REDACTED] and cease all collection efforts. Any recouped funds should be returned to petitioner. These actions must be completed within 10 days.

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.

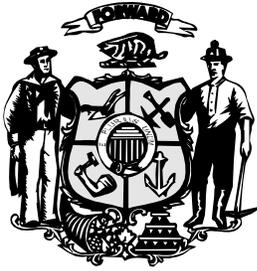
APPEAL TO COURT

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 5th day of September, 2014

\sJohn P. Tedesco
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 September 5, 2014.

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