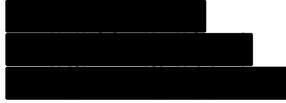




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/159050

PRELIMINARY RECITALS

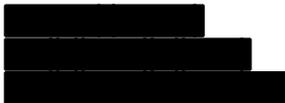
Pursuant to a petition filed July 16, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a telephonic hearing was held on August 12, 2014.

The issue for determination is whether the agency correctly determined that petitioner was overpaid FS.

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: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Kenosha County.
2. In July 2013 the petitioner filed an appeal on her FS benefits. Pursuant to petitioner's appeal request at that time, the agency was ordered to restore her FS, pending the outcome of the fair hearing. See Exhibit 1. Thus, her FS was issued in August 2013 in the amount of \$152 and \$153 in September 2013. Petitioner was then subject to a fair hearing decision, #FOO/151086 (dated

9/11/13) which ordered petitioner's FS to be \$108 monthly effective August 1, 2013. See Exhibit 3. Petitioner did not appeal that decision.

3. Petitioner was overissued FS in the amount of \$44 in August 2013 and \$45 in September 2013.
4. On June 19, 2014 the agency sent petitioner a notice stating that she had been overissued FS in the amount of \$89 due to client error.

DISCUSSION

The issue for determination is whether the agency correctly concluded that petitioner was overissued FS. FS overpayments are calculated by determining the correct amount of food stamp benefits, if any, the household was entitled to receive, and establishing a claim for the difference between the allotment the household received and the allotment the household should have received. 7 C.F.R. §273.18(c)(1). I have reviewed the agency's calculations and while the worksheet shows an overpayment of \$91, the notice itself does indicate the correct amount of \$89, being the difference she received for those two months over the amount she was ordered to receive per the previous decision. I add for clarity in this record that the worksheets are computer-system-generated which makes it difficult to capture the correct information entered at the time of the overpayment versus what the system had during the overpayment period.

The federal regulations concerning FS overpayments require 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). The *FS Handbook* also states that a client error can occur when the overissuance was caused by an unintended error due to continuation of benefits pending a fair hearing decision. *FS Handbook*, §7.3.1.9. This is what occurred here.

Petitioner did not contest the overpayments per se. She did however object to the time frame from which the overpayments were made (August and September 2013) until she received notice of the overpayment (June 2014). I can understand that finding out that you owe a debt made over about 9 months ago is frustrating. However, as the agency explained at hearing, the delay was due to the fact that the agency did not have personnel hired during that time to work on the overpayment. I also note to the petitioner that the approximately 9 month wait is not outside the scope of the law. Nor is it outside the scope of the agency's practice. The agency is required to act as promptly as possible, but overpayments can be taken from years prior to any notice issued about any overpayment. 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). If, however, all or part of the overpayment was due to agency error occurring more than 12 months prior to "discovery" of the overpayment, then the agency is barred by current federal law and state policy from seeking recovery of the amounts prior to 12 months. *Ibid*.

Petitioner did not appeal the decision which ordered her FS benefits to be \$108 for the months in question. Therefore the agency acted in accordance with that Order and properly established the overpayment. Beyond the legal allowances, petitioner's argument is an equitable argument, and I lack the equitable powers to grant the relief sought. See *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993).

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid FS in the amount of \$89 (claim # [REDACTED]).

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 27th day of August, 2014

\sKelly Cochrane
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 August 27, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability