FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[redacted]

DECISION

FOP/159490

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Portage County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on September 3, 2014. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning petitioner's wife: FOP-159491.

The issue for determination is whether it was correct to establish the following Claim against petitioner for an overpayment of FS: Claim Number [redacted] for the time period October 2012 in the total amount of $183.07.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Cheryl Kawlewski, ES Lead Worker
Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Wood County, Wisconsin.
2. The County established the following Claim against petitioner for an overpayment of FS: Claim Number [redacted] for the time period October 2012 in the total amount of $183.07.
3. The FS overpayment in *Findings of Fact* #2, above, resulted from the fact that on September 20, 2012 an FS supplement for October 2012 was issued to petitioner by the County in error; the overpayment was caused by County error and was not petitioner's fault.
4. On or about October 2, 2012 the County first became aware of the overpayment as evidenced by an *Overpayment/Benefit Recovery Referral Form* of that date; the overpayment claim was not calculated and created until July 2014.

DISCUSSION

The law provides that each person who was an adult member of the FS Household when the overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.2. Further, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2011); FWH 7.3.1.1 & 7.3.1.2. Therefore, petitioner can be held liable for the FS overpayment and made to repay it even though he did not cause the overpayment.

Petitioner argues that the overpayment is unjust because it took the County over 2 years to notify him of it. It is true that the overpayment claim was not calculated and created until July 2014. The County acknowledges that the overpayment was not calculated in a timely manner. However, the overissuance period begins with the date of discovery and extends back up to 1 year for non-client errors and up to six years for client errors. Overissuance claims must be established and recovered even if they are not calculated within this time frame. Overissuance claims must be established and recovered even if they are calculated late; failure to complete a claim within the given timeframe does not void the overissaunce. FWH 7.3.2.1; 7 C.F.R. §§ 273.18(c)(1)(i) & (d)(3) (2011).

In this case the County discovered this non-client overpayment on or about October 2012. Thus, the overissuance period extends back to October 2011. Therefore, the overpayment claim in this matter is well within the allowed time period.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is liable for the FS overpayment detailed in *Findings of Fact* #2, above, and may be made to repay it.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 10th day of September, 2014

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on September 10, 2014.

Portage County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability