



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FOP/159792

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 10, 2014, at Madison, Wisconsin.

The issue for determination is whether the petitioner was overpaid FS from September 2010 through April 2011.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Monica Johnson, Overpayment Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Dane County.
2. The petitioner received FS as a household of one person from at least July 2010, through April 2011.

3. On July 14, 2014, a *FoodShare Overpayment Notice* and worksheets were sent to the petitioner, advising that he had been overpaid \$1,600 in FS for the 9/1/10 – 4/30/11 period (claim # [REDACTED]). Exhibit 2A-1. The overpayment was due to client error.
4. The petitioner began a job through Qualitemps in July 2010, with the resulting income exceeding the FS gross monthly income limit of \$1,806.00 throughout the September 2010 through April 2011 period. The petitioner did not report this income to the agency until his periodic review on March 23, 2011.

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 (viewable 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. There is a one-

year time limit, however, for how far back in time the agency may go if the overpayment was due to agency error.

II. THE PETITIONER WAS OVERPAID FS FOR THE 9/1/10 – 4/30/11 PERIOD.

Neither the arithmetic of the agency’s overpayment determination nor the amount of the petitioner’s income is in dispute. The petitioner explained that it must have been an oversight on his part, and that he eventually turned in his wage information.

The agency may proceed with collection of this overpayment.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$1,600 FS from September, 2010 through April 30, 2011, due to client error.
2. The county agency is correctly pursuing recovery of that overpayment, pursuant to federal law.

THEREFORE, it is

ORDERED

That 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 12th day of September, 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 September 12, 2014.

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