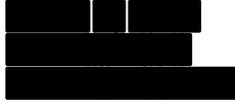




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/160297

PRELIMINARY RECITALS

Pursuant to a petition filed August 29, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Shawano County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 7, 2014, at Shawano, Wisconsin. The hearing record was held open for seven days for a submission from the petitioner; nothing was received.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid \$1,119 in FS for the January through May, 2014 period, plus August 2014.

There appeared at that time 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: Debra Marohl, ES Lead Worker
Shawano County Department of Social Services
607 E. Elizabeth Street
Shawano, WI 54166-3105

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Shawano County.
2. The petitioner, age 33, received FS as a household of one person from at least January, 2014, through May 31, 2014, and for August 2014.

3. On August 25, 2014, *FoodShare Overpayment Notices* and worksheets were sent to the petitioner, advising that he had been overpaid \$1,119 in FS for the 1/1/14 – 5/31/14 and August 1-31, 2014, periods (claims # [REDACTED], # [REDACTED], # [REDACTED]). Exhibits 3,4,5. The overpayment was due to agency error.
4. The petitioner timely reported that that he was a full-time student during the overpayment months. Specifically, he reported on his September 23, 2013 periodic review that he was a full-time college student; he was also employed at that time at a golf course. In a periodic review document dated March 5, 2014, he indicated that he was receiving Unemployment Compensation rather than wages, and also declared a tuition expense plus receipt of a Pell Grant. *See*, Exhibits 1,2. Unfortunately, the agency caseworker (not the worker present at hearing) failed to enter his student status into the case from at least January, 2014, onward. This error persisted into August 2014. When the petitioner’s student status and hours worked were considered for the months of January through August, 2014, the unfortunate result was that the household was not eligible for any FS during January through May, plus August 2014.

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.

II. THE PETITIONER WAS OVERPAID FS FOR THE 1/1/14 – 5/31/14 PERIOD, PLUS AUGUST 2014.

As a general proposition, the federal FS rules declare that a person aged 18 to 49, who is enrolled in an institution of higher education, is ineligible to receive FS. This general prohibition is stated in 7 C.F.R. §273.5(a), below:

§273.5 Students

- (a) *Applicability.* **An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section.** An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum ...
- (b) *Student Exemptions.* **To be eligible for the program, a student** as defined in paragraph (a) of the section **must meet at least one of the following criteria.**
- (1) Be age 17 or younger or age 50 or older;
 - (2) Be physically or mentally unfit;
 - (3) Be receiving Temporary Assistance for Needy Families under Title IV of the Social Security Act;
 - (4) Be enrolled as a result of participation in the Job Opportunities & Basic Skills program under Title IV ...
 - (5) **Be employed for a minimum of 20 hours per week** and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;
 - (6) Be participating in a State or federally financed work study program during the regular school year. ...
 - (7) Be participating in an on-the-job training program. ...
 - (8) Be responsible for the care of a dependent household member under the age of 6;
 - (9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available ...
 - (10) Be a single parent enrolled in an institution of higher education on a full-time basis and be responsible for the care of a dependent child under age 12. ...
 - (11) Be assigned ... an institution of higher education through or in compliance with the requirements of one of the programs identified in

paragraphs (b)(11)(i) through (b)(11)(iv) of this section. [e.g., §236 program under the Trade Act of 1974].

(emphasis added)

7 C.F.R. §273.5(a),(b). See in accord, the Wisconsin policy authority, *FS Wisconsin Handbook*, 3.15.1.

The petitioner was ineligible for FS when he was enrolled at least half-time at a postsecondary school. He is age 33, and hence not exempt from the bar against students receiving FS. He does not fit within any exception at (b)(5) above, for employed students. Thus, he was overpaid in any month in which he was in school and not working at least 20 hours weekly.

Given that the petitioner works more hours in warm weather, the hearing record was held open seven days to allow him an opportunity to submit paystubs for May and August. It was thought that such pay records might show that the petitioner was working at the 20 hours weekly level. Nothing was received, so this Judge will rely on the Departments' earnings information.

The arithmetic of the agency's overpayment determination is not 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.

CONCLUSIONS OF LAW

1. The petitioner was overpaid FS from January through May, 2014, plus August 2014, due to agency 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.

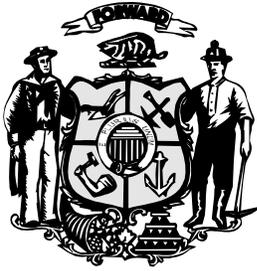
APPEAL TO COURT

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 20th day of October, 2014

\sNancy J. 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 October 20, 2014.

Shawano County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability