



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/160577

PRELIMINARY RECITALS

Pursuant to a petition filed September 11, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Fond du Lac County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 9, 2014, by telephone.

The issue for determination is whether the petitioner was overpaid FS for the March through June 2014 period.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Deb Bohlman, ES Worker
Fond du Lac County Department of Social Services
87 Vincent Street
Fond du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.
2. The petitioner received FS as a household of four persons from at least March, 2014, through June 2014.

3. On August 25, 2014, an *FS Overpayment Notice* and worksheets were sent to the petitioner, advising that she had been overpaid \$1,277.00 in FS for the 3/1/14 – 6/30/14 period (claim # [REDACTED]). Exhibit 5. The overpayment was due to agency error.
4. The petitioner has received FS since 2011. Both a BadgerCare Plus (BCP) and a FS review were required for her case in February 2014. A FS review notice was sent to the petitioner on January 13, 2014; that notice stated that an interview would be required. The petitioner did complete a BCP review on February 3, 2014. A FS review, with its required interview and submission of a "signature page," did not occur.
5. On February 17, 2014, The Department issued written notice to the petitioner, advising that her FS benefits would be discontinued effective March 1, 2014, because her FS review had not been completed. On March 3, the petitioner telephoned the Department's Call Center, stated that she had done a review, and asked why her FS had been discontinued. The Call Center worker formed the incorrect belief that a FS review had been completed, and she re-opened the FS case. On March 4, the Department issued written notice to the petitioner advising that the household would receive FS from March 1, 2014 forward.
6. The petitioner was not eligible for FS from March 1, 2014 through July 2, 2014 solely because she did not complete a FS review interview and return a signed signature page by March 1, 2014.
7. On July 3, 2014, a new FS application and interview were completed, restoring FS eligibility as of that date.

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. However, agency error recoveries are limited to going back one year from their discovery date.

II. THE PETITIONER WAS OVERPAID FS FOR THE 3/1/14 – 6/30/14 PERIOD.

Neither the arithmetic of the agency’s overpayment determination nor the amount of the petitioner’s income is in dispute. If the petitioner had performed the interview and returned the resulting signature page -- requirements identified in the January 13, 2014 notice – she would have been continuously eligible for FS and not overpaid. *See*, 7 C.F.R. 273.14(b); *FSWH*, § 2.2.1.3. However, she did not do so, so her household was not eligible during the overpayment period. The petitioner does not contest that she did not complete the interview and return the signature page. Instead, she argues that the Call Center worker on March 3 should have told her what was needed. The petitioner further explained that she had provided all requested verification to the agency, and that she believes that she did nothing wrong. But, 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 March through June, 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 27th day of October, 2014

\sNancy J. Gagnon
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 October 27, 2014.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability