



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Redact
[Redacted]

DECISION

FOP/161300

PRELIMINARY RECITALS

Pursuant to a petition filed October 15, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 11, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid \$2,697.00 in FS for the January through June, 2014 period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact
[Redacted]

Respondent:

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

By: Pang Thao Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. The petitioner received FS as a household of four from at least January, 2014, through June, 2014.

3. On October 7, 2014, *FoodShare Overpayment Notices* and worksheets were sent to the petitioner, advising that she had been overpaid \$2,697.00 in FS for the 1/1/14 – 6/30/14, period (claim #5900414725). Exhibit 6. The overpayment was due to agency error.
4. The petitioner timely reported her household income. Unfortunately, the agency caseworker incorrectly zeroed out her earned income when determining eligibility for Chld Care benefits. When the error was uncovered and petitioner's earned income budgeted for the FS determination, the result was that the household was not eligible for any FS during January through June, 2014.

### DISCUSSION

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.

The petitioner does not dispute the calculation of the overpayment, and I have found no mathematical errors. However, she asserts that she was told to apply for FS benefits when she began receiving kinship benefits; she had never received FS benefits prior to that time. She does not feel that she should be responsible for repaying a liability that arose from the agency's error. While I can empathize with her position, as noted above, the law requires that when an overpayment occurs, even if caused by agency error, the overpayment must be collected. The petitioner has in effect argued that the overpayment recovery is unfair and that the administrative law judge should grant her relief from that liability. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she is liable for the overpayment; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law.

### **CONCLUSIONS OF LAW**

1. The petitioner was overpaid FS from January 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 5th day of December, 2014

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\sPeter McCombs  
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 December 5, 2014.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability