



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Redact

DECISION

FOP/161483

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regards to an overpayment of FoodShare benefits (FS), a telephone hearing was ultimately held on December 30, 2014, at Milwaukee, Wisconsin. A hearing set for November 19, 2014, was dismissed as abandoned. The petitioner requested a rehearing on December 1, 2014. That request was granted on December 3, 2014.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid \$2,352 of FS from November 1, 2013, to May 31, 2014, because she was receiving FS in a second and pre-existing household in the State of Illinois.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact

Respondent:

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

By: [Redacted], HSPC
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is currently a resident of Illinois.
2. The petitioner received at least \$2,352 of FS from the Department as a Wisconsin resident during the period of November 1, 2013, to May 31, 2014.

3. During the period of November 1, 2013, to May 31, 2014, the petitioner was also receiving FS benefits from the State of Illinois as an Illinois resident.
4. The petitioner requested FS from Wisconsin at the county agency on September 3, 2013, stating she had moved to Wisconsin on August 16, 2013, and was then certified as eligible for FS in Illinois through December 13, 2013.
5. On September 23, 2013, the petitioner again reported she was living in a shelter in Milwaukee, and that she was receiving FS from Illinois; and that these benefits would end October 1, 2013.
6. On September 25, 2013, required verifications were apparently received and the petitioner was approved for FS to open in October, 2013.
7. On November 1, 2013, the county agency received an email, either from the petitioner or the petitioner's W-2 worker, reporting that the petitioner had moved to Illinois and her case should close.
8. On November 27, 2013, the petitioner came to the county agency in Wisconsin to ask why her FS case was closing. She was informed that the FS database indicated her address was changed to Illinois. She replied that she was living in Wisconsin, in a shelter in Milwaukee. Her FS case was open, and it was determined to continue to be open by the agency, and left open.
9. On December 30, 2013, the agency noted in Case Comments that mail to petitioner had returned, and that a review of her Quest Card FS transactions indicated she has spent a "considerable amount in Chicago, Illinois".
10. On January 7, 2014, the petitioner came in to the agency and requested child care again, and again provided Joy House, a shelter in Milwaukee, as her address, along with a letter from Joy House stating that she was residing there.
11. On January 16, 2014, mail sent to the address the petitioner provided on January 7, 2014, returned as undeliverable.
12. On February 23, 2014, the petitioner called the agency to report a new residence address in Milwaukee County.
13. On May 13, 2014, the agency noted in Case Comments that the petitioner had several items of returned mail, and that a review of Quest records showed she had been spending FS benefits in Illinois for 60 days, and the agency acted to close the FS case.
14. On July 13, 2014, the petitioner again contacted the agency and asked why her FS closed and she was told that the agency received returned mail, and noted that all FS had been spent in Illinois for the last 60 days (as of May), and that the petitioner would need to come to the agency with ID to re-open her case.
15. On August 7, 2014, a caseworker from Illinois called the Milwaukee County agency and reported that the petitioner had been at her agency (today) to apply for FoodShare benefits from Illinois and had stated to her that she did not live in Wisconsin and had never lived in Wisconsin.
16. On October 17, 2013, the FoodShare agency for Illinois confirmed that the petitioner had been issued FS from Illinois for at least the period of January, 2013, through July, 2014.
17. On October 20, 2014, the agency issued a FoodShare Overpayment Notice to the petitioner informing her that it had determined that she had not been eligible for the FS issued to her in the period of November 1, 2013, through May 31, 2014, in the amount of \$2,352, because duplicate FoodShare was issued in another state due to "CLIENT ERROR".
18. On October 27, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the overpayment determination.

DISCUSSION

If a FS overpayment occurred during the time in question, the agency must make an effort to recover it, regardless of who was at fault in creating the overpayment. An FS overpayment is defined as:

(a) Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive...

See, 7 C.F.R. §273.18(a). Thus, even if a FS agency in either Wisconsin or Illinois was the cause of the overpayment, the petitioner must still repay it. The agency believes that an overpayment occurred here because the petitioner's household continued receiving FS from Illinois even after she moved to Wisconsin; and that she was moving back and forth between both states and continuing to receive benefits in both states. The applicable regulation can be found at 7 CFR §273.3(a) and the *FoodShare Wisconsin Handbook* § 3.4.1, which states:

A person cannot be a member of more than 1 food unit and 1 FS group in the same month except residents of shelters for battered women and children.

Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits. States typically issue benefits on either a calendar or fiscal month. A fiscal month cycle provides benefits from a date in one month to a corresponding date in the next month. California (Fresno), Massachusetts, Nevada and South Dakota issue on a fiscal month cycle. Illinois issues benefits by calendar month (first day through the last day of the month) and by fiscal month (16th through 15th). Wisconsin issues on a calendar month cycle.

**** (Text – box example omitted here.)

Workers should contact the other state to verify the FS end date.

In any Fair Hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case. This applies when the action is based on proving that a person was overpaid FS. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the county agency's evidence of correct action by the county agency in determining the negative action was required.

The petitioner concedes that she did formerly live in Illinois before, during, and after she received FS benefits from Wisconsin in the overpayment test period. However, the petitioner asserted that she did live in Wisconsin for periods of time in the overpayment period, and it was essentially the Illinois agency's fault that she continuously got FS from Illinois too.

The documentation obtained from Illinois is quite clear. FS were issued to her electronic benefits card in each of the seven months in the Wisconsin overpayment period. In fact, her case was open long before the Wisconsin case opened; while it was open; and after it closed.

In essence, she testified that she was moving back and forth between the states, without clearly stated time periods or residences. Therefore, implicitly, she should be able to keep the benefits in both states. She argues that she reported a move back to Illinois to the Milwaukee W-2 agency. She has not proof of

any of her whereabouts at the hearing. Rather, the record demonstrates exactly this; she got benefits in both states concurrently while moving back and forth between a shelter in Wisconsin and an unknown residence accommodation in Illinois. This testimony stretches credulity beyond the breaking point. I can only conclude this petitioner is an “artful dodger”, and her testimony is totally without credibility.

To do otherwise would be to reward her for acting irresponsibly in accepting and spending both sets of FS benefits. In addition, the record is replete with recorded references to continuous long term use of FS from Wisconsin in the state of Illinois. I decline to do so. This proffered explanation is simply too convenient.

The agency has established a prima facie case showing that the petitioner was overpaid by Wisconsin while she was receiving of legal right FS from Illinois. The petitioner has failed to credibly rebut this showing. The FS overpayment determination must be sustained under these facts.

CONCLUSIONS OF LAW

1. The petitioner was ineligible for Wisconsin FS during the months she was receiving FS from Illinois and Wisconsin, November, 2013, – May, 2014.
2. The petitioner received an overpayment of FS in Wisconsin in the amount of \$2,352 during the period of November, 2013, – May, 2014.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be, and the same hereby 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 2nd day of January, 2015

\sKenneth D. Duren, Assistant Administrator
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 January 2, 2015.

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