



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case information

DECISION

FOP/161745

PRELIMINARY RECITALS

Pursuant to a petition filed November 6, 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 December 23, 2014, by telephone. A hearing set for November 26, 2014, was rescheduled at the petitioner's request. At the petitioner's request, the hearing record was held open for 17 days (7 days initially, then a 10-day extension beginning January 2, 2015); nothing was received.

The issue for determination is whether the petitioner was overpaid FS from January 1, 2014 through September 30, 2014.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner information

Respondent:

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

By: Redacted, IM Spec. Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Redacted, Georgia.

2. The petitioner received FS as a household of two persons (self and minor child) from at least July 2013, through September 2014.
3. On October 23, 2014, a *FS Overpayment Notice* and worksheets were sent to the petitioner, advising that she had been overpaid \$2,621.00 in FS for the 1/1/14 – 9/30/14 period (claim #6900417526). The overpayment was due to client error (failure to report move out of state).
4. The petitioner had on ongoing Wisconsin FS case by at least July 2013 through September 2014. In March 2013, she was charged with a felony in Milwaukee County, Wisconsin. Per court records, at her bail hearing in May 2013, she advised the court that “she no longer has a place to stay in WI but does have a place in **Redact**, GA.” The petitioner pled guilty to one felony count in Milwaukee County in September 2013.
5. The petitioner’s sentencing hearing was held on October 15, 2013. She was placed on probation for 18 months, and the Department of Corrections agreed to look into transferring the petitioner’s probation supervision from Wisconsin to the State of Georgia. Per court records, Corrections confirmed to the court in March 2014 that the probation supervision had transferred to Georgia.
6. The petitioner completed an online FS case review on November 25, 2013, and declared that she was still living in Milwaukee, Wisconsin. However, she reported to the Wisconsin child support agency on November 1, 2013, that she had moved to **Redact**, **Redact**, Georgia. A Wisconsin family court document (paternity) filed on January 7, 2014, lists the petitioner at the **Redact**, Georgia address. The petitioner used her FS card the majority of the time in Georgia from January through September 2014.
7. On March 14, 2014, the petitioner performed a telephonic renewal of her FS case, and declared that she continued to live in Wisconsin. On August 26, 2014, the county agency issued a residence verification request to the petitioner. When she did not respond, the agency closed her FS case effective September 30, 2014. The petitioner currently lives in Georgia.
8. The petitioner lived in Georgia from at least December 2013 through September 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 (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 1/1/14 – 9/30/14 PERIOD.

The arithmetic of the agency's overpayment determination is not in dispute. Rather, the petitioner argues that she was residing in Wisconsin during the overpayment period. The Department contends that she was not living in Wisconsin during the period, and therefore could not claim FS through Wisconsin for herself or as casehead of her household.

The Department has met its burden of establishing the overpayment by a preponderance of the credible evidence. The agency introduced the court records showing the petitioner's statement at her May 2013 bail hearing, in which she stated that she had a place to stay in Georgia. Those records also show that at her October 2013 sentencing hearing, she asked to have her probation supervision transferred from Wisconsin to Georgia; by March 2014 Wisconsin DOC confirmed to the court that supervision had been transferred to Georgia. It is highly unlikely that a supervision transfer would have occurred if the petitioner was not living, the majority of the time, in Georgia. At hearing, the petitioner agreed that her probation supervision was done by Georgia throughout the overpayment period. Nonetheless, she argued that she divided her time between Wisconsin and Georgia, so she saw no need to close her Wisconsin case and file a new application with the State of Georgia. She agreed that she used her FS card in both Wisconsin and Georgia during the period. Her son remained in school in Wisconsin during the school months of the period. The hearing record was held open to allow the petitioner to submit additional documentation of her whereabouts to this ALJ post-hearing; nothing was received. The petitioner's assertion of Wisconsin residence during the overpayment period is not credible.

### CONCLUSIONS OF LAW

1. The petitioner was overpaid \$2,621 FS from January 2014 through September 2014, 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 Wisconsin county where you live/lived. 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 21st day of January, 2015

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\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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 21, 2015.

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