



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOP/162255

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on January 08, 2015. The record was held open for a period of 10 days to allow time for petitioner to submit additional documentation. Said documentation was timely received.

The issue for determination is whether petitioner is liable for an overissuance of FS benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of La Crosse County.

2. On January 6, 2014, the respondent informed petitioner that she was overpaid a total of \$1,352.00 in FS from July, 2012, through June, 2013 due to client error for failing to report accurate unearned income.
3. Petitioner filed for Chapter 7 bankruptcy, and on January 17, 2014, she filed an amended notice of creditors that included the State of Wisconsin Department of Health Services' overissuance claim in the amount of \$1,352.00. The Bankruptcy Court issued a discharge on February 24, 2014.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, § 7.3.1.2.

Under 11 U.S.C. §524, a discharge in bankruptcy has several results that include an injunction against any action to continue recovery of a debt. In this case petitioner and her husband filed bankruptcy and received a discharge. Thus at this point any efforts to recover the debt must be stopped.

The respondent argued that the petitioner's appeal was untimely, based upon an assumption that the petitioner was contesting the overpayment. However, the real issue is whether or not the respondent has grounds to continue to pursue the overpayment following the bankruptcy discharge. I note that, even if the respondent were to seek to establish that the overpayment debt was obtained by fraud, which potentially would be an exception to the discharge, any such arguments would have to be taken up with the bankruptcy court or other court having jurisdiction. At present I have before me a debt listed as being "client error" with no allegation of fraud, that has seemingly been discharged in bankruptcy. The respondent is free to pursue its legal remedies, but right now I must order the agency to cease recovery of the overpayment claim.

CONCLUSIONS OF LAW

The recovery of the FS overpayment claim in this case must be stopped due to the discharge of the overpayment debt in petitioner's bankruptcy.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to cease collection of the overpayment at issue in this case. The county shall do so within 10 days of this decision.

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 4th day of February, 2015.

\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 February 4, 2015.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability