FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

Redact

DECISION

FOP/162527

PRELIMINARY RECITALS

Pursuant to a petition filed December 8, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Vilas County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 8, 2015, by telephone.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid FS from July through September 2013.

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, Resolution Coordinator
Vilas County Department of Social Services
330 Court Street
Eagle River, WI 54521

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a resident of Oneida County.
2. The petitioner received FS as a household of one person from at least February 2013, through the present.

3. On November 6, 2014, a *Foodshare Overpayment Notice* and worksheets were sent to the petitioner, advising that he had been overpaid $567.00 in FS for the 7/1/13 – 9/30/13 period (claim # Redact). Exhibit 7. The overpayment was due to client error.

4. The petitioner began seasonal employment in May 2013. He was required to report this job within 10 days of its commencement. He did not report the income at any time in 2013. The petitioner's gross earnings averaged $818.75 monthly. When this income was added to his $1,610 monthly unearned income, the result was that he was over the $1,211 FS gross income for one person.

5. The agency learned of the petitioner's 2013 summer income when it received an employer wage match report from the Wisconsin Department of Workforce Development in January 2014. In reviewing the petitioner's FS calculations, the agency discovered that an agency worker had erred on the side of generosity in double-counting a medical expense deduction for the petitioner from March 2013 forward. If the medical expense had been correctly counted, the petitioner would have received $16 in FS, rather than $189, from March 2013 forward. However, the agency is not seeking to recover the overpayments related to the double-counted medical expense, because that was a worker error.

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 7/1/13 – 9/30/13 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's income is in dispute. The petitioner was required to report his seasonal income in 2013, and he did not do so. His failure to report means that his overpayment for the months in which he received seasonal income is "client error," rather than "worker error." Because the overpayment was caused by client error, the agency is allowed to go back to July 2013 in its recovery effort. It may do so here.

CONCLUSIONS OF LAW

1. The petitioner was overpaid $567 FS from July 2013 through September 2013, 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 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 13th day of January, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
FOOoverPtrInc

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 January 13, 2015.

Vilas County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability