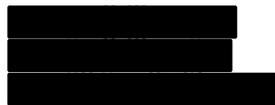




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/163238

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on February 05, 2015, at Kenosha, Wisconsin.

The issues for determination are whether Petitioner was overissued FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Karen Mayer
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) received FoodShare from Kenosha Wisconsin at all times relevant here.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated November 21, 2014. It informed Petitioner that he had been overissued FoodShare in the amount of \$756.00 for the months of May 2014 through August 2014.
3. The basis for this FoodShare overissuance claim was that Petitioner was actually residing in Illinois during the time period involved here. Mail sent to Petitioner by the local agency was returned with an

Illinois forwarding address in Beach Park and the FoodShare benefits issued to Petitioner by Wisconsin during the time period involved here were spent in Illinois.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 Code of Federal Regulations (CFR) § 273.18(b), see also FoodShare Wisconsin Handbook (FSH), §7.3.2.

In order to receive FoodShare in Wisconsin a person must live in Wisconsin. FSH, §3.2.1. If an agency finds that an applicant or FoodShare recipient does not live in Wisconsin the FoodShare application is to be denied or, if the FoodShare case open, it is to be closed. FSH, §1.2.3.5.

Petitioner testified that he was living in Wisconsin when he applied for FoodShare but that he was evicted shortly after, was homeless in Wisconsin and living with friends and using the Illinois address for mailing purposes.

I am concluding that the agency was correct to conclude that Petitioner was out of the State of Wisconsin and not eligible for FoodShare. The deciding factor is the fact that the benefits were used in the State of Illinois. If one is homeless in Wisconsin, it does not make sense that they would be travelling to Illinois to do all of the grocery shopping even if in communities not far from the border.

I do note for Petitioner’s benefit the following FSH provision as to repayment of an overissuance:

7.3.2.12 Repayments

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

FSH, §7.3.2.12.

CONCLUSIONS OF LAW

That the agency conclusion that Petitioner was not living in Wisconsin, that he was not eligible for FoodShare evidence and was, therefore, overissued FoodShare is affirmed.

THEREFORE, it is

ORDERED

That this appeal 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.

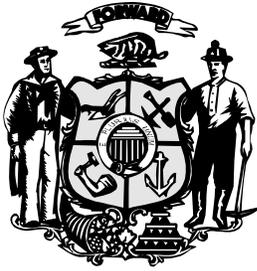
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 16th day of March, 2015

\sDavid D. Fleming
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 16, 2015.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability