



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/163492

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Office of the Inspector General (OIG) to recover FoodShare benefits (FS), a hearing was held on March 18, 2015, by telephone. A second hearing was conducted on April 14, 2015 at the request of the Administrative Law Judge for the purpose of obtaining additional evidence. A hearing set for February 17, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined an FS overpayment.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Atty. [Redacted]
Legal Action of Wisconsin
[Redacted]

Respondent:

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

By: [Redacted]
Office of the Inspector General
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner's girlfriend S.T. applied for FS in Milwaukee in May, 2012. Her household included petitioner and their two children. The household began to receive FS in Wisconsin effective July 1, 2012.

3. During the application S.T. presented evidence to the Milwaukee case worker that her Illinois benefit case was closing at the end of June, 2012. No mention was made of a separate Illinois FS case in petitioner's name. The worker made an inquiry to Illinois and verified that S.T. received FS through June, 2012.
4. In April, 2014, the Wisconsin agency discovered that petitioner and the two children continued to receive FS in Illinois after June, 2012. Exhibit 1 and Exhibit 2, page 2. It learned that petitioner and S.T. had separate FS cases in Illinois, and only S.T.'s case closed. Illinois public assistance records show that petitioner continued to receive FS in Illinois for the period July 1, 2012 through September 30, 2013, after which his Illinois case closed.
5. By notices dated December 8, 2014, the Wisconsin OIG notified petitioner that he was overpaid a total of \$4,580 in FS, claim nos. [REDACTED], [REDACTED], and [REDACTED]. The OIG determined that the overpaid FS were those issued to petitioner and the children in Wisconsin, on the theory that the Illinois FS case was in place first and a person cannot receive duplicate FS.

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*, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

A person cannot receive FS in two states. 7 C.F.R. §272.4(e)(1). State agencies must establish a system to assure that individuals participate in only one jurisdiction in a month. *Id.* The *FS Handbook*, Appendix 3.4.1 tells Wisconsin workers about the prohibition of duplicate benefits, and that the Wisconsin worker should contact the former state to verify the FS end date in the former state. Wisconsin will not issue FS in this state until the former state's benefits are closed.

In this case the evidence shows that petitioner received FS in Illinois for a three-person household, and that those benefits continued to be issued until September 30, 2013. Additional records show that the Illinois benefits were used. See Exhibit 2, pages 12-30. When S.T. applied for FS for the household she did not report that she and petitioner had separate FS cases in Illinois, and thus the Wisconsin worker did not know to ask Illinois if petitioner had a separate case and if it also closed. Had the Wisconsin worker known that petitioner and the children continued to receive FS in Illinois, they would not have been added to S.T.'s Wisconsin FS case. As a result, FS issued to petitioner and the children in Wisconsin were overpaid as determined by the OIG. The overpayment period ended when petitioner's Illinois FS case closed.

Petitioner argues that the Illinois records are hearsay and should not be used as evidence that petitioner was issued the Illinois FS. The Wisconsin Supreme Court has ruled that hearsay is admissible in administrative proceedings. *Gehin v. Wisconsin Group Ins. Bd.*, 278 Wis. 2d 111, 133; see also Wis. Stat., §227.45. The Court has also ruled that administrative bodies should never base findings solely upon uncorroborated hearsay. *Ibid.* See also *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987), and see *Outagamie County v. Town of Brooklyn*, 18 Wis. 2d 303, 312 (1962).

The records at issue are governmental records kept in the regular course of business setting forth regular office activities, that is, the issuance of FS benefits and the record of usage of the benefits. A hearsay exception is that such records are admissible with the availability of the declarant being immaterial. Wis. Stat., §908.03(8). Petitioner argues that the records are nevertheless hearsay and inadmissible under the *Gehin* guidelines, but the rule is that the hearsay records cannot be the sole basis of the finding. There is corroboration of the records in this case, however. It is uncontroverted that petitioner received FS in Illinois prior to moving to Wisconsin. The records show that he did, and he admitted that he did. Those same records show that Illinois continued to issue FS to petitioner until the end of September, 2013. The issuance record shows petitioner's name, address, birth date, and social security number (SSN); the birth date and SSN both match the items in S.T.'s Wisconsin application.

The e-mails from Illinois do not come under the hearsay exception. However, the e-mails were the reason that the Wisconsin worker requested the assistance group and issuance records from Illinois, and the issuance record confirms the e-mails.

Issuance of FS benefits now is accomplished entirely by computers with periodic data entry by irregularly assigned state or county workers. Any benefit history could potentially fail a strict hearsay test because no one person could testify to taking the action to issue benefits or to create the benefit screen. Thus even if a witness from the Illinois Department testified that the records in Exhibit 2 are in fact copies of Illinois public assistance benefit records, that person would almost certainly have no personal knowledge of the issuances made specifically to this petitioner. Virtually all overpayments claims would fail at hearing because the issuance history would be hearsay unless the FS recipient admitted to receiving the benefits.

In this case petitioner received FS in Illinois prior to moving to Wisconsin, and Illinois records verify as such (the Illinois benefit history screens are very similar to Wisconsin benefit history screens). The Illinois records also show that petitioner continued to receive FS in Illinois after he started to receive FS in Wisconsin. Petitioner has not claimed that he closed his Illinois FS case when he moved to Wisconsin, or that his identity was stolen. While petitioner testified that he did not use the Illinois FS after moving to Wisconsin, he also admitted that because he is disabled he allowed another person or people to use his FS card while he was in Illinois. It is possible that somebody else used petitioner's Illinois FS because he gave that person information necessary to utilize his benefits. As noted by Ms. [REDACTED], however, it is the issuance of the Illinois FS that caused the overpayment, not the usage. Thus the evidence shows that petitioner and the two children received duplicate FS in both states, and the FS issued to them in Wisconsin were an overpayment.

I want to clarify why I reconvened the hearing. At the first hearing petitioner's only testimony was that he allowed another person or persons to use his FS card in Illinois, and that he did not use the Illinois FS card in Wisconsin. While working on the decision I became concerned that I had failed to ask him whether he informed the Illinois agency about his move to Wisconsin, and if so, whether he was aware of any action to close the case. At the second hearing he testified that he did not remember whether he informed the Illinois agency about the move or whether he received a case closing letter (Ms. [REDACTED] reported that she was aware of his memory problem, which is why she did not ask him the question during the first hearing).

I note finally that an issue arose over whether Wisconsin or Illinois should be prosecuting this overpayment claim. The OIG pointed to federal rules and a Federal Register commentary that the state of current residence is the one that should recover the overpayment. I can find nothing preventing Wisconsin from seeking recovery of the duplicate FS issuances. If Illinois sought recovery the Illinois agency representative would have the same evidentiary problems concerning Wisconsin FS benefit records as the Wisconsin representative has in this case concerning Illinois records. Furthermore, the FS issued in Illinois between July, 2012 and October, 2013 is very close to the amount of the Wisconsin overpayment (\$4,580 Wisconsin

overpayment versus \$4,356 issued to petitioner in Illinois). Thus the recovery by Wisconsin is neither proscribed nor overly inflated.

CONCLUSIONS OF LAW

The OIG correctly determined an FS overpayment issued to petitioner because his FS case in Illinois remained open for fifteen months after he moved to Wisconsin, and thus Wisconsin FS issued to him and the two children who also were on the Illinois FS case duplicated the Illinois FS issuances.

THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby 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 17th day of April, 2015

\sBrian C. Schneider
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 April 17, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney [REDACTED]