



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted name and address

DECISION

FOP/163573

PRELIMINARY RECITALS

Pursuant to a petition filed January 27, 2015, 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 February 18, 2015, at Milwaukee, Wisconsin. With the petitioner's consent, the hearing record was held open for submission of an employment document; that submission was received.

The issue for determination is whether the petitioner was overpaid FS benefits from April through August 2014, due to excess income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redacted name and address

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 Milwaukee County.
2. The petitioner has an ongoing FS case as a household of one person. He submitted a periodic FS review to the Department on February 28, 2014, showing no employment or earnings. He was

hired for a part-time position by [Redact] on March 7, 2014. The petitioner began receiving income that exceeded the 130% Federal Poverty Level (\$1,245) reporting threshold by April 2014.

3. The petitioner did not report his increased income or employment to the agency until September 2014. The position at [Redact] ended on August 8, 2014. On September 9, 2014, the petitioner filed a Six Month Report Form with the Department, declaring that he had no employment or income.
4. Subsequently, the Department learned of the [Redact] employment through a wage report from the state's employer reporting data exchange in September 2014. An employer verification form was received by the Department on September 19, advising that the petitioner had been making \$12.00 hourly, but that he no longer worked there. Verification of wages was requested on November 24, 2014, so that the overpayment amount could be correctly calculated for each month. Although the petitioner's employer told the petitioner that it had returned the requested verification to the Department, the Department received no *monthly* income verification from the employer.
5. On December 23, 2014, the Department mailed a *FoodShare Overpayment Notice* to the petitioner. It advised that he had been overpaid FS of \$945 for the April 1, 2014 through August 31, 2014 period. The cause of the overpayment was listed as client error – failure to report earned income.
6. Post-hearing, the petitioner submitted an employment verification form that did not provide month by month breakdowns of gross income. Rather, the form simply says that he was paid \$12.00 hours for 20-24 hours weekly, ending August 8, 2014. Using the 24 hour figure, gross monthly income comes out to \$1,238. This cannot be correct, as the employer's reported gross wages for April through June 2014 was \$4,557.60 (an average of \$1,519.20 monthly), and \$4,146.12 for the third quarter (July through September) of 2014. Thus, the best evidence in this record of the petitioner's earnings is the average of the quarterly wage database figures.
7. Using the petitioner's average monthly wages from the employer wage database, after subtracting the standard FS personal deduction, the petitioner's income substantially exceeded the \$958 net income limit for a one-person FS household.

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 4/1/14 – 8/31/14 PERIOD.

The arithmetic of the agency’s overpayment determination is undisputed. There is also no dispute that the petitioner worked for Redact from March into August 2014. The petitioner was given an opportunity post-hearing to supply more detailed (month to month breakdown) of his income to determine if there were some months during the overpayment period where his overpayment amount might be less than alleged by the Department. The documentation submitted does not establish that the Department’s figures are erroneous. Thus, the Department may proceed with its recovery effort.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$945 FS from April 2014 through August 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 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 27th day of February, 2015

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

The preceding decision was sent to the following parties on February 27, 2015.

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