



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/163759

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 06, 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 March 11, 2015, at Milwaukee, Wisconsin.

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

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Pang Thao Xiong  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated February 3, 2015. It informed Petitioner that he had been overissued FoodShare in the amount of \$63.00 for the month of October 2014.

3. The basis for this FoodShare overissuance claim was that Petitioner filed a hearing request with the Division of Hearings and Appeals in September 2014 to contest a reduction in his FoodShare that was to occur in October 2014. Because he requested the hearing before the date of the reduction, his FoodShare was continued at the pre-reduction level. A hearing was scheduled for October 9, 2014. Petitioner did not appear for that hearing and the appeal was dismissed by the Division of Hearings and Appeals on October 10, 2014. This effectively confirmed the reduction that was to occur for October 2014. There was no request for a rehearing or Circuit Court appeal.

**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.

Also applicable here is the following:

...

**Client Error**

Establish a claim for a client error that occurred when the FS group unintentionally:

1. Failed to provide correct or complete information.
2. Failed to report a change that was required to be reported.
3. Received FS for which it was not entitled pending a fair hearing decision.

...

*FSH, §7.3.2.1.*

Given the above, Petitioner was overissued FoodShare for October 2014 and the agency may proceed to collect that overissuance.

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 Petitioner was overissued FoodShare in October 2014 in the amount of \$63.00 and the agency may proceed to collect that overissuance.

**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 8th day of April, 2015

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\sDavid D. Fleming  
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 8, 2015.

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