



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOP/164770

PRELIMINARY RECITALS

Pursuant to a petition filed March 20, 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 May 13, 2015, at Milwaukee, Wisconsin. A hearing scheduled for April 15, 2015, was rescheduled at the petitioner's request.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid FS from March 2014 through July 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Ms. Redact

Respondent:

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

By: Redact, HSPC Sr.
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Milwaukee County.
2. The petitioner received FS as a household of two persons from at least January 2014 through July 2014.

3. On March 12, 2015, a *Foodshare Overpayment Notice* and worksheets were sent to the petitioner, advising that she had been overpaid \$1,540 in FS for the 3/1/14 – 7/31/14 period (claim # **Redact**). Exhibit 1, p.139. The overpayment was due to client error.
4. The petitioner has been employed at **Redact** throughout the overpayment period. She was required to report significantly increased income within 10 days of receipt. She did not report the increased income into July 2014. *E.g.*, for March 2014, the petitioner reported earnings of \$750 plus unearned income of \$158, and received FS of \$308. She actually received \$1,930 in earnings, for total March income of \$2,088 (\$1,930 + \$148). The \$2,088 income exceeded the FS gross income limit for two.
5. The agency learned of the petitioner's increased income when it received a tip and an employer wage match report from the Wisconsin Department of Workforce Development later in 2014. The agency discovered that the petitioner had increased income that exceeded the 130% Federal Poverty Level (FPL). When her *actual* income was budgeted, the result was that the petitioner's household was eligible for zero FS from March through July 2014.

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 3/1/14 – 7/31/14 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 her increased income in 2014, and she did not timely do so. Her failure to report means that her overpayment for the months above is "client error," rather than "worker error." The agency may proceed with recovery.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$1,540 FS from March 2014 through July 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 29th day of May, 2015

\sNancy J. Gagnon
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 May 29, 2015.

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