



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/165102

PRELIMINARY RECITALS

Pursuant to a petition filed April 02, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on May 19, 2015.

The issues for determination are 1) whether the petitioner's appeal is timely and 2) whether the agency has established an overpayment of FS against the petitioner from September 1, 2011 through July 31, 2014.

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: Jeanie Ortiz, ESS

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner was a member of a household that received FS from September 1, 2011 through July 31, 2014 as a household of 3. [REDACTED] was part of that household.
3. On June 27, 2014 the agency received an anonymous tip about unreported income in the petitioner's home. The agency thereafter began a fraud investigation.
4. All of the income in the petitioner's household was not reported from September 1, 2011 through July 31, 2014.
5. On October 24, 2014 the agency issued a notice of decision to petitioner at an [REDACTED] address stating that the petitioner was overissued FS from September 1, 2011 through February 29, 2012 in the amount of \$1482 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 1.
6. On October 24, 2014 the agency issued a notice of decision to petitioner at an [REDACTED] address stating that the petitioner was overissued FS from March 1, 2012 through August 31, 2012 in the amount of \$1485 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 1.
7. On October 24, 2014 the agency issued a notice of decision to petitioner at an [REDACTED] address stating that the petitioner was overissued FS from September 1, 2012 through February 28, 2013 in the amount of \$483 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 1.
8. On October 24, 2014 the agency issued a notice of decision to petitioner at an [REDACTED] address stating that the petitioner was overissued FS from March 1, 2013 through August 31, 2013 in the amount of \$1524 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 1.
9. On October 24, 2014 the agency issued a notice of decision to petitioner at an [REDACTED] address stating that the petitioner was overissued FS from September 1, 2013 through February 28, 2014 in the amount of \$1168 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 1.
10. On October 24, 2014 the agency issued a notice of decision to petitioner at an [REDACTED] address stating that the petitioner was overissued FS from March 1, 2014 through July 31, 2014 in the amount of \$275 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 1.

DISCUSSION

1. Timeliness of Appeal.

As a first point, generally an appeal of a negative action regarding FS must be filed within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Adm. Code §HA 3.05(3)(b). All department notices of decision include standard language informing recipients of the appeal time limits. It is a longstanding legal tenet that for the appeal period to run, the member must receive timely, adequate notice of the negative action. In this matter, the agency was unable to show that it issued the notices of FS overpayment to petitioner at her correct address of record. The evidence showed that she lived with [REDACTED] on [REDACTED], but the notices were delivered to an [REDACTED] address and were returned as undeliverable to the agency. Further, the evidence also showed that the agency was made aware of her address on [REDACTED] by way of an O'Brien and Associates report. See Exhibit 16. Accordingly, I find that the petitioner was not given adequate notice of the action, and the matter is timely.

2. Overpayment of FS.

All FS overpayments must be collected. 7 C.F.R. § 273.18(a)(2); See also, *FoodShare Handbook* §7.3.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. Each person who was an adult member of the FS household when the overpayment occurred is responsible for repaying the overpayment. 7 C.F.R. § 273.18(a)(4)(i); See also, *FoodShare Handbook*, §7.3.1.2.

Petitioner does not deny that the FS overpayments occurred. In fact, she is the person who reported it to the agency. See Finding of Fact # 3. To that end, she argues that it is wholly unfair to make her liable for the overpayment. Unfortunately, that is an equitable argument, and one over which I do not have jurisdiction. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Petitioner also argued that she was not living in the home for a few of the months in the overpayment period. Unfortunately, this also does not alleviate her liability. The federal regulations state that each person who was an adult member of the household when the overpayment occurred is responsible for the overpayment. 7 C.F.R. § 273.18(a)(4)(i). Petitioner *was* a member of the FS household for the periods of overpayment because she was still on ██████'s FS case and receiving FS benefits thereunder as a member of the household. See DHA Decision No. FOP/162529 (January 23, 2015). Accordingly, under the law she is equally liable for the overpayments.

If she is eligible for FS, FS repayments may be made out current allotments. She can also contact the Public Assistance Collection Unit (PACU) to see if an affordable repayment arrangement can be made. Failing to pay back overpayments may result in a tax intercept.

CONCLUSIONS OF LAW

1. The petitioner's appeal is timely.
2. The agency has established an overpayment of FS against the petitioner from September 1, 2011 through July 31, 2014.

THEREFORE, it is

ORDERED

The petition for review herein 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 4th day of June, 2015

\sKelly Cochrane
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 June 4, 2015.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability