



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/165452

PRELIMINARY RECITALS

Pursuant to a petition filed April 13, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on May 07, 2015, at Kenosha, Wisconsin. The record was held open post-hearing for a period of 7 days to allow the agency to submit additional evidence. On May 14, 2015, the agency submitted additional information. The record was closed on May 14, 2015.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$5,050 from the Petitioner for the period of March 1, 2014 – February 28, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Kenosha County.

2. On February 11, 2014, the Petitioner applied for FS benefits in Wisconsin. Petitioner received FS benefits from Wisconsin from March 1, 2014 – February 28, 2015. She reported a household of three including her two minor children. She reported living with her previous foster mother.
3. On July 31, 2014, the Petitioner submitted a Six Month Report Form.
4. On August 11, 2014, the agency received verification from the Petitioner’s former foster mother that the Petitioner was residing at her home and paying rent.
5. On February 3, 2015, the Petitioner submitted an online ACCESS renewal for FS. She reported living in [REDACTED], Wisconsin. On February 10, 2015, the Petitioner reported to the agency that she had been living in [REDACTED] since April, 2014 but returned to Wisconsin in January, 2015.
6. Petitioner’s EBT transaction detail shows the Petitioner’s EBT card was used in Wisconsin during all of 2014.
7. On February 11, 2015, the agency received information from the State of [REDACTED] informing the agency that the Petitioner had an open case in [REDACTED] for food stamps. She reported an address of [REDACTED] to the [REDACTED] agency.
8. On March 10, 2015, the agency received additional information from the State of [REDACTED] that the Petitioner received food stamps from [REDACTED] for the periods of June, 2013 – November, 2013 and March, 2014 – February, 2015. Her [REDACTED] case was closed on February 28, 2015.
9. On March 25, 2015, the agency issued a FS Overpayment Notice to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$5,050 for the period of March 1, 2014 – February 28, 2015.
10. On April 13, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS 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 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

In this case, the agency presented evidence to establish that the Petitioner received FS benefits in Wisconsin from March, 2014 – February, 2015 and received food stamp benefits in [REDACTED] for the same period of time.

The Petitioner testified that she lived in [REDACTED] from March, 2014 – January, 2015. She testified that when she applied for benefits in [REDACTED], the [REDACTED] agency told her that it had obtained a letter from Wisconsin that her case was closed in Wisconsin. She stated that she was unaware she was still receiving benefits from Wisconsin for that period. She concedes that she never reported to the Wisconsin agency herself that she had moved to [REDACTED].

The Petitioner also testified that she did not use her EBT card in Wisconsin from March, 2014 – December, 2014 and that she never turned in the SMRF in July, 2014.

The agency pointed out that the EBT card could only have been used if the Petitioner provided her PIN to someone else and the online SMRF could have been filed only if the Petitioner provided her log-in information to someone else.

The Petitioner was given time to submit additional information to prove her [REDACTED] residence and to show that the [REDACTED] agency contacted Wisconsin to close her Wisconsin case. She was also advised that consideration could be given to the case if she filed a police report for stolen benefits. The Petitioner provided no additional evidence post-hearing.

The agency did provide additional evidence from the [REDACTED] agency which stated that [REDACTED] never contacted Wisconsin about the Petitioner's Wisconsin case and that the Petitioner never reported to the [REDACTED] agency that she had just moved from Wisconsin and had an open case in Wisconsin.

Based on the evidence, I conclude that the agency has presented sufficient evidence to demonstrate that the Petitioner received duplicate benefits from [REDACTED] and Wisconsin for the period of March, 2014 – February, 2015. The Petitioner failed to present evidence to rebut the agency's case. Her testimony that she was unaware that she was receiving Wisconsin benefits at the same time as receiving [REDACTED] benefits is not credible. She applied for benefits in Wisconsin in February and first received the card and benefits in March. She testified that she moved to [REDACTED] in March but never supplied her PIN to anyone yet her benefits were used in Wisconsin from March – December, 2014. She applied for benefits in [REDACTED] in March but never mentioned her move to the [REDACTED] from Wisconsin to either agency. Her testimony just is not credible. The agency properly seeks to recover all benefits totaling \$5,050 issued to the Petitioner during that period.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$5,050 for the period of March 1, 2014 – February 28, 2015.

THEREFORE, it is

ORDERED

That the Petitioner's 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 3rd day of June, 2015

\sDebra Bursinger
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 3, 2015.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability