



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/165558

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 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 June 02, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that petitioner was overpaid FS.

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, IM Spec. Adv,
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 21, 2013 the petitioner filed an appeal on his FS benefits which were going to be reduced effective November 1, 2013. See Exhibit 4. Pursuant to petitioner's appeal request, the agency was ordered to restore his FS, pending the outcome of the fair hearing. *Id.*

3. Petitioner was then subject to a fair hearing decision, #FOO/152936 (dated 12/11/13) which upheld the agency's action to reduce his FS.
4. Petitioner was overissued FS in the amount of \$351 in November 2013 and \$691 in December 2013. See Exhibits 5 and 6.
5. On March 5, 2015 the agency sent petitioner a notice stating that he had been overissued FS in November and December 2013 because of benefits continued during fair hearing due to client error. See Exhibit 5.

DISCUSSION

The issue for determination is whether the agency correctly concluded that petitioner was overissued FS. FS overpayments are calculated by determining the correct amount of food stamp benefits, if any, the household was entitled to receive, and establishing a claim for the difference between the allotment the household received and the allotment the household should have received. 7 C.F.R. §273.18(c)(1). I have reviewed the agency's calculations and while the worksheet shows an overpayment of \$941, the testimony and budgets show that the overissuance occurred as stated above in Finding of Fact #4 in the total amount of \$1042. The petitioner agreed that he had received those benefits and had used them.

The federal regulations concerning FS overpayments require 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). The *FS Handbook* also states that a client error can occur when the overissuance was caused by an unintended error due to continuation of benefits pending a fair hearing decision. *FS Handbook*, §7.3.1.9, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. This is what occurred here.

Petitioner did not contest the overpayment per se. Rather he wanted to testify about how the 2013 case originated and that the mother of his children provided false information to the agency. The agency representative at hearing advised him of how to report fraud. He also testified that he did not know what it really meant when he checked the box to have his benefits continue. The language on the appeal request states, "If the action affects your MA or FoodShare benefits and your request is received before the effective date, your benefits in most cases, will not stop or be reduced. (Overpayment of benefits may be recovered by the county agency.) Do you wish your benefits to be continued?" The petitioner then checked the box "YES". *Id.* Even if I believed petitioner that he did not understand what he was signing, the agency is required to establish a claim against any FS group that has received more FS than it was entitled to receive. *FS Handbook*, §7.3.1.1. There was no dispute that this occurred. Moreover, I could not change the result because it might be fair, as I lack the equitable powers to grant the relief sought. See Oneida County v. Converse, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993).

CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overissued FS in the amount of \$351 in November 2013 and \$691 in December 2013.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 6th day of July, 2015

\sKelly Cochrane
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 July 6, 2015.

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