



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

FOP/165615

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Office of the Inspector General (OIG) to recover FoodShare benefits (FS), a hearing was held on June 11, 2015, by telephone. A hearing set for May 12, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the agency has established that petitioner was overpaid FS.

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact

Petitioner's Representative:

Atty. [Redacted]
Legal Action of Wisconsin, Inc.
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted]
OIG
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Virginia who formerly received FS in Brown County.
2. On December 1, 2014, the Brown County Sheriff mailed to petitioner at her Virginia address a citation for violating Brown County ordinance 30.05(7), fraud in public assistance. The specific allegation was that petitioner trafficked FS at two small stores that did not have sufficient food in stock for a person to make purchases in the amounts paid by petitioner.

3. Petitioner did not appear at the scheduled court date on March 4, 2015. She was found guilty on a no contest plea of violating ordinance no. 30.05(7).
4. On March 13, 2015, the OIG notified petitioner that she was overpaid \$500.42 in FS in 2014 because she trafficked FS, claim no. Redact. The amount was determined by adding together large purchases made at the stores that had been investigated.

### **DISCUSSION**

The Department is required to recover all FS overpayments. Benefits that are trafficked are considered to be overpayments. 7 C.F.R. §273.18(a)(1)(ii). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

A trafficking overpayment is considered an Intentional Program Violation (IPV) claim as defined in 7 C.F.R. §273.16. 7 C.F.R. §273.18(b)(1). The agency shall establish the amount of such a claim by the individual's admission, adjudication, or the documentation that forms the basis of the trafficking determination. 7 C.F.R. §273.18(c)(2).

It is evident that before an overpayment based upon trafficking can be entered, a trafficking IPV first must be established. In this case there has been no IPV adjudication or determination. The OIG imposed the IPV sanction against petitioner solely based upon a default entry of a no contest plea in an ordinance violation citation. I find in the concurrent case, no. FOO-16525, that the court judgment in the ordinance violation action is insufficient to establish an IPV. Thus it follows that the overpayment based upon the alleged IPV also cannot stand unless it is adjudicated by a lawful IPV proceeding.

### **CONCLUSIONS OF LAW**

The alleged overpayment for trafficking is invalid because it has not been adjudicated in an IPV proceeding.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the OIG with instructions to rescind overpayment claim no. Redact against petitioner, within 10 days of this decision.

### **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 19th day of June, 2015

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\sBrian C. Schneider  
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 19, 2015.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
Attorney Redact