



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact
[Redacted]

DECISION

FOP/165882

PRELIMINARY RECITALS

Pursuant to a petition filed May 07, 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 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly determined that petitioner was overpaid FS benefits from February, 2015 – April, 2015, in the amount of \$510.00.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact
[Redacted]

Respondent:

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

By: [Redacted]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.
2. Petitioner had an ongoing FS case in Milwaukee County, and had been receiving FS benefits in Milwaukee since at least May of 2014.

3. Petitioner was found by the Illinois Department of Human Services to have committed an Intentional Program Violation concerning FS benefits. Illinois imposed a 12 month FS sanction on petitioner, February 1, 2015 – January 31, 2016. Petitioner appealed, but it was determined that, in Illinois, no reconsideration or petition for rehearing is allowed; a Final Administrative Decision is reviewable only through the Circuit Courts of the State of Illinois.
4. Petitioner's Wisconsin FS benefits were terminated on April 15, 2015. On that same date petitioner was mailed a FoodShare Overpayment Notice, which determined that petitioner was overpaid FS benefits from February, 2015 – April, 2015, in the amount of \$510.00. The notice indicated that the overpayment was due to non-client error. Exhibit 6.

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 respondent has the burden of proof to establish that the action taken (termination) 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.

The arithmetic of the agency's overpayment determination is not in dispute. Rather, the petitioner explained that he had provided all requested information to the agency, and that he did nothing wrong. However, as noted above, the agency must collect the overpaid benefits, even if the overpayment was caused by an innocent misunderstanding or mistake. This mandatory recovery is required under federal law, which means that a state official, such as myself and the county agency, must comply with that requirement.

The petitioner argued that he is ill, and that he cannot afford to purchase food. The petitioner has, in effect, argued that the program standard is unfair and that the administrative law judge should grant him relief from the program requirements. I first note that I have no jurisdiction over the Illinois' finding of an intentional program violation. Furthermore, it is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable (fairness) powers. 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. Under law, he is liable for an overpayment of FS; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

That the county agency correctly determined FS overissuance Claim No. Redact, finding that the petitioner was overpaid \$510.00 of FS from February, 2015, through April, 2015.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be, and the same hereby 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 10th day of June, 2015.

\sPeter McCombs
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 10, 2015.

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