



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOP/166092

PRELIMINARY RECITALS

Pursuant to a petition filed May 16, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Washburn County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on June 15, 2015, at Shell Lake, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of FoodShare that occurred because she received benefits from two states simultaneously.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact
Washburn County Department of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # Redact) is a resident of Washburn County.
2. The petitioner was receiving FoodShare in California when she moved to Wisconsin and applied for benefits there. She began receiving benefits in Wisconsin in May 2014.

3. The petitioner cut up her California electronic benefits card when she moved to Wisconsin but did not notify California that she had moved or Wisconsin that she was receiving benefits in California. As a result, her California card continued to accumulate benefits from May 2014 through February 2015.
4. The petitioner used \$12 of her California benefits in May 2014 but none after that.
5. The Wisconsin FoodShare agency brought an action to recover \$1,650 in FoodShare benefits the petitioner received while remaining eligible in California. California has since recovered all benefits placed on the petitioner's card from May 2014 through February 2015, except the \$12 she used in May 2014.
6. The Wisconsin agency reduced its claim to \$12. It had already recovered \$20, so it issued an \$8 FoodShare supplement to the petitioner.

DISCUSSION

Federal regulations require state agencies to "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. A person cannot receive FoodShare from two different project areas at once. 7 CFR § 273.3(a). A project area is the jurisdiction issuing FoodShare; it can be a county, some other entity set up by the state, or the entire state. 7 CFR § 271.2.

The petitioner had been receiving FoodShare in California. When she moved to Wisconsin, she applied here and began receiving benefits. However, instead of informing either state of her situation, she merely cut up her California electronic benefits card. This led to her receiving benefits from both states from May 2014 through February 2015. Wisconsin brought a claim for \$1,650 against her. She had not used her California card since May 2014, when \$12 was debited, so more than the Wisconsin claim was on that card.

At the hearing, I suggested that it would be more expedient for California to recover the benefits because it would involve only removing the unused benefits from her card rather than trying to recover cash from someone who obviously did not have it. The worker said its policy was for the second state to recover, in this case Wisconsin, and that the petitioner could continue to use her California benefits. But after the hearing, the Wisconsin worker indicated that California had recovered the benefits from the petitioner's card and that the only amount still in question was \$12 she used in May 2014. It had already recovered \$20 from her and issued an \$8 supplemental payment. I find that this satisfies any overpayment and will make an order to ensure that the agency's records reflect that any overpayment has been satisfied.

In making this decision, I am aware that the petitioner now contends that she should be able to keep benefits from both states. She says that since she did not use the California card from June 2014 through February 2015, the benefits do not duplicate her Wisconsin benefits. I pointed out that she used them now, they would duplicate still duplicate her Wisconsin benefits. She acted like she could not understand my reasoning. Before the hearing she indicated that she was a doctor. I did not ask what kind, but I assume she is intelligent enough to understand the rules and, based upon her attitude throughout the hearing, was merely being difficult.

CONCLUSIONS OF LAW

1. The petitioner received an overpayment of FoodShare from May 2014 through February 2015 because she was eligible for benefits from two states at the same time.
2. Any overpayment the petitioner received from May 2014 through February 2015 has been recovered by California or Wisconsin, and Wisconsin has no further claim against the petitioner.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it remove any finding of an overpayment of FoodShare to the petitioner from June 2014 through February 2015 and that it end any attempt to recover any amounts not already recovered. The agency's records may continue to reflect that the petitioner received a \$12 overpayment in in May 2014, but it may not attempt to recover this amount because it has already done so.

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 24th day of June, 2015

\sMichael D. O'Brien
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 24, 2015.

Washburn County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability