



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/166767

PRELIMINARY RECITALS

Pursuant to a petition filed June 17, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Wood County Human Services – Wis. Rapids in regard to FoodShare benefits (FS), a hearing was held on July 7, 2015, by telephone.

The issue for determination is whether the Department can collect FS overpaid to the petitioner from February 1, 2015 through June 30, 2015.

There appeared at that time 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: Beulah Garcia, Resolution Coordinator
Northern Consortium

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sawyer County.
2. The petitioner received FS as a household of one person from at least February 2014 through the present time. On December 15, 2014, the Department mailed a letter to her, advising that she needed to complete an annual renewal/recertification by January 31, 2015.

3. On June 5, 2015, a *FoodShare Overpayment Notice* and worksheets were sent to the petitioner, advising that she had been overpaid \$430.00 in FS for the 2/1/15 – 6/30/15 period (claim # [REDACTED]). The overpayment was due to agency error.
4. The petitioner's case was due for an annual renewal (paperwork and interview), to be performed no later than January 31, 2015. The petitioner left a voicemail message with her tribal agency, asking for a call-back to perform her interview. In Wisconsin, an interview may be in-person face-to-face or by telephone. She did not receive a return call. Failure to complete the renewal/recertification should have resulted in closure of the petitioner's FS case effective February 1, 2015. Unfortunately, the Department incorrectly left her FS case open through June 2015. The error persisted until June 2015, when the case was again reviewed. When the petitioner completed a renewal in June 2015, the Department determined that she was eligible for FS for July 2015, forward.

DISCUSSION

I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

273.18 Claims against households.

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) ***Benefits that are overpaid*** or
- (ii) Benefits that are trafficked. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

(4) The following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount* – (1) *Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment ...

(e) *Initiating collection actions and managing claims.*

(1) *Applicability.* State **agencies must begin collection action on all claims** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>). The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected. However, if the overpayment was caused by an agency error, the overpayment recovery period is limited to one year.

II. THE PETITIONER WAS OVERPAID FS FOR THE 2/1/15 – 6/30/15 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's income is in dispute. It is also undisputed that the petitioner did not sign a recertification form signature page in January 2015. Rather, the petitioner explained that she left a telephone voicemail message with the agency in January, and that she did nothing wrong.

Per federal rule, the Department cannot issue FS to a recipient whose one-year certification period has expired:

§273.14 Recertification.

(a) *General.* No household may participate beyond the expiration of the certification period assigned in accordance with §273.10(f) without a determination of eligibility for a new period. ... Households must apply for recertification and comply with interview and verification requirements.

...

(2) *Application.* The State agency must develop an application to be used by households when applying for recertification. ... A new household signature and date is required at the time of application for recertification. The recertification process can only be used for those households which apply for recertification prior to the end of their current certification period, except for delayed applications as specified in paragraph (e)(3) of this section.

...

(3) *Interview.* As part of the recertification process, the State agency must conduct a face-to-face interview with a member of the household or its authorized representative at least once every 12 months for households certified for 12 months or less. The provisions of §273.2(e) also apply to interviews for recertification. ...

(e) *Delayed processing.* (1) If an eligible household **files an application** before the end of the certification period but the recertification process cannot be completed within 30 days after the date of application because of State agency fault, the State agency must continue to process the case and provide a full month's allotment for the first month of the new certification period. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of §273.3(h)(1).

(2) If a household files an application before the end of the certification period, but fails to take a required action, the State agency may deny the case at that time, at the end of the certification period, or at the end of 30 days. ...

[*emphasis added*]

7 C.F.R. § 273.14(a),(e).

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 Department/county agency, must comply with that requirement.

CONCLUSIONS OF LAW

1. The petitioner was overpaid FS from February 2015 through June 2015, due to agency error.
2. The Department is correctly pursuing recovery of that overpayment, pursuant to federal law.

THEREFORE, it is

ORDERED

That the petition 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 July, 2015

\sNancy J. Gagnon
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 10, 2015.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability