



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/166834

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Office of the Inspector General (OIG) in regard to FoodShare benefits (FS), a telephonic hearing was held on July 14, 2015.

The issue for determination is whether the OIG has established an FS overpayment against the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Nadine Stankey
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County and has been a recipient of FS.

2. On April 17, 2015 a [REDACTED] issued a Default Judgment against the petitioner stating that petitioner did not appear at the court date on April 16, 2015, and that she was found guilty on a no contest plea of violating ordinance no. 30.05(7).
3. On April 28, 2015, the OIG notified petitioner that she was overpaid \$1701.02 in FS from June 1, 2013-November 30, 2013 (claim # [REDACTED]) and overpaid \$388.91 from March 30, 2014-June 30, 2014 (claim # [REDACTED]) because she trafficked FS due to an intentional program violation (IPV).

DISCUSSION

The Department/OIG 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*, §7.3.1.2.

A trafficking overpayment is considered an Intentional Program Violation (IPV) claim as defined in 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 found in the concurrent companion case no. FOO/166833, that the court judgment in the ordinance violation action is insufficient to establish an IPV. Thus it follows that the overpayments based upon the alleged IPV also cannot stand unless they are adjudicated by a lawful IPV proceeding.

CONCLUSIONS OF LAW

The alleged overpayments for trafficking are invalid because they have 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 # [REDACTED] and claim # [REDACTED] 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 Milwaukee,
Wisconsin, this 7th day of August, 2015

\sKelly Cochrane
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 August 10, 2015.

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

