FH
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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOP/166869

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Ozaukee County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on July 22, 2015, at Port Washington, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

This hearing was combined with a hearing for Petitioner's boyfriend; nonetheless, a separate decision is required though the two cases and decisions are very similar.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:
[redacted]

Petitioner's Representative:
[redacted]

Respondent:
Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Karen Niemuth
Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:
David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Ozaukee County.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated April 3, 2015. It informed Petitioner that she had been overissued FoodShare in the amount of $2066.00 for the period from May 24, 2013 through December 31, 2013.

3. The basis for this FoodShare overissuance claim was that income for Petitioner's boyfriend was not reported though he was reported in Petitioner's household.
4. Petitioner's healthcare and child care case was reviewed in April/May 2013. (Petitioner and her boyfriend do have a child together but that youngster was not born until September 18, 2014. She does have another child, hence the child care review.) In an interview at the end of that review process, Petitioner requested FoodShare benefits. She reported that her boyfriend was in the home but did not indicate that he was working.
5. Petitioner completed a case review in August 2013 and a six month report form in September 2013. She reported her boyfriend in the home on both. No employment was reported for him.
6. A May 28, 2013 Notice of Decision and a September 30, 2013 Notice of Decision do include Petitioner's boyfriend as part of her FoodShare household and notes a household income reporting threshold of $2106.00.
7. The agency noted that there was likely an overpayment in this case in a February 5, 2014 email.

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 an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

Also applicable here are the following provisions from the *FoodShare Wisconsin Handbook (FSH), §7.3.2.1.*

> …
> **Client Error**
> Establish a claim for a client error that occurred when the FS group unintentionally:
> 1. Failed to provide correct or complete information.
> 2. Failed to report a change that was required to be reported.
> 3. Received FS for which it was not entitled pending a fair hearing decision.
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> …
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> <><><><>
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> …
> The look back period for client errors begins with the date of discovery (the day the IM discovered the potential that an overissuance may exist) and extends backward:
> 1. Six years, or
> 2. To the month the change would have been effective had the group timely reported it, whichever is most recent.
>
> ...
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> <><><><>
>
> …
> The look back period for non-client errors begins with the date of discovery (the day the IM discovered the potential that an overissuance may exist) and extends backward:
> 1. Twelve months, or

2. To the month the error was effective had the change been acted on timely, whichever is most recent.

   The overissuance period begins with the first month the change would have been effective up to the month prior to when the case was corrected.

   It is essential that the date of discovery be documented in case comments. This date locks in the look back and overissuance period. This date will not change even if calculated untimely.

   In order to meet the established timeliness requirements, overissuance claims must be completed before the last day of the quarter following the quarter in which the IM discovered an overissuance. This holds true for both client and agency errors. Overissuance claims must be established and recovered even if they are not calculated within this timeframe. Overissuance claims must be established and recovered even if they are calculated late; failing to complete a claim within the given timeframe does not void the overissuance.

   …

   FSH, §7.3.2.1.

Further, regarding discovery and establishing claims, an April 4, 2012 BPS/DFS Operations Memo, No. 12-20 (effective 4-4-2012), indicates that the "discovery" date is not the county agency's May 2015 FS Overpayment Notice, but instead the "the date that the ESS became **aware** of the potential that an overissuance may exist." That date was February 5, 2015.

Petitioner's defense here is that she informed the agency that she lived with her boyfriend but was told that he was not part of the household as they did not have a child in common thus she did not report his income. Thus Petitioner contends that this was an agency error not a client error. She also argues that the agency never requested verification of his earnings – also an agency error. The argument is that these agency errors limit the overpayment to the period of 12 months prior to the discovery of the error.

I conclude that there is an overpayment here and that the agency may recover it. First, I am not convinced that this was agency error. Petitioner noted that her boyfriend was in the home but reported no employment for him. She reports no employment for him in August or September 2013. That it was agency error that it did not request verification for him does not make sense – there is no reason to request verification of something it has not been told exists. Additionally, the May and September 2013 Notices of Decision do indicate that he is a FoodShare household member. Finally, even it this were an agency error, it was discovered within 12 months of the start of the overpayment.

Petitioner also argues that this overpayment was not calculated in the quarter following the quarter in which it was discovered thus cannot be collected. The policy manual does state, however, that an overpayment must be established and collected even if calculated outside of time limits. I do not see a conflict in the relevant Federal regulation and noted has been noted by Petitioner's attorney. See 7 CFR §273.18.

Finally, I do note for Petitioner's benefit the following *FSH* provision as to repayment of an overissuance:

7.3.2.12 Repayments

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than $500 should be paid by at least $50 monthly installments
2. Overpayments $500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than $20.

FSH, §7.3.2.12.

CONCLUSIONS OF LAW

That household income was not reported as required and Petitioner's household was overissued FoodShare as alleged and the agency may proceed to recover that overissuance.

THEREFORE, it is

ORDERED

That this appeal 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 Milwaukee,
Wisconsin, this 21st day of August, 2015

_____

\sDavid D. Fleming
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 21, 2015.

Ozaukee County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[redacted]