



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/167493

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on September 24, 2015, at Green Bay, Wisconsin.

The issue for determination is whether the agency has established that petitioner was overpaid FS.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Hal Menendez
31 South Mills Street
Madison, WI 53715

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:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County who received FS benefits in at least August of 2014.
2. Petitioner was issued a citation for violating Brown County ordinance 30.05(2), "Interfering with Proper Administration of Public Benefits" on August 3, 2014. On November 7, 2014, the Brown

County Office of the Sheriff mailed the ordinance citation to the petitioner, informing him, in part, that a conviction would result in a one-year bar from receiving FS for a first violation. See Exhibit R-2.

3. After a court trial on May 16, 2015, petitioner was found guilty of violating Brown County ordinance 30.05(2), "Interfering with Proper Administration of Public Benefits", a subsection of the ordinance entitled "Prohibiting Fraud In Public Assistance." Exhibit R-1.
4. Petitioner had no prior program violations. Following the guilty verdict the state FS agency imposed a one-year bar on petitioner receiving FS.

DISCUSSION

The Department 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, Appendix 7.3.1.2. It would appear that the respondent contends that petitioner is liable for an overpayment due to trafficked benefits. A trafficking overpayment is considered an Intentional Program Violation (IPV) claim as defined in 7 C.F.R. §273.16. 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 determined, the respondent must establish the amount of such a claim by the individual's admission, adjudication, or the documentation that forms the basis of the trafficking determination. In this case there has been no specific admission or adjudication as to the amount of the overpayment. Maybe the Brown County court made findings in this regard, but I have nothing specific upon which to base a finding. The record does not include an overpayment overpayment notice, which might include some specificity as to the amount and dates of the claimed overpayment. The respondent's Office of the Inspector General imposed an IPV sanction against petitioner, which was upheld in the concurrently and issued companion case DHA/167492. However, the IPV sanction based upon a circuit court guilty verdict, in and of itself, cannot verify the actual amount of an overpayment or the overpayment time frame.

I find guilty verdict identified in Finding of Fact 3, above, in the ordinance violation action is insufficient to establish the amount or time frame of the alleged overpayment. The respondent, as the party that seeks to change the current state of affairs by recovering an overpayment, has the burden of proving that an overpayment occurred by the preponderance of the credible evidence. I conclude that it has failed to establish the certain amount owing and has failed to establish the time frame of the overpayment period.

CONCLUSIONS OF LAW

The respondent has failed to establish petitioner's liability for an overpayment of FS benefits because it has failed to establish the amount of the alleged overpayment and the time period during which petitioner was overpaid benefits.

THEREFORE, it is

ORDERED

That the matter be remanded to the respondent with instructions to rescind overpayment claim no. [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 Madison,
Wisconsin, this 23rd day of October, 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 October 23, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney Hal Menendez