



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/167883

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 7, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Wisconsin Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on September 16, 2015, by telephone.

The issue for determination is whether the Department of Health Services correctly determined that the petitioner was overpaid FS from February 9, 2011 through December 31, 2011.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED] OIG  
Public Assistance Collection Unit  
PO Box 8938  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) was a resident of Wisconsin.
2. After a trial on April 29, 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.” The charging document issued to petitioner informed him that a conviction would result in a one-year bar from receiving FS for a first violation. *See*, Exhibits 1, 2.

3. Evidence brought forth in the Brown County case was that a store named [REDACTED] was trafficking FS by allowing recipients to use FS to pay off debts in exchange for FS. The store was shown to have virtually no stock.
  4. Transactions showed up in the [REDACTED] store’s ledger as being repayments for debt. Petitioner made unauthorized FS transactions with [REDACTED] on the following dates:
    - May 11, 2011 - \$ 94.96
    - June 9, 2011 - \$170.95
    - August 9, 2011 - \$ 86.58
    - December 9, 2011 – \$73.53  
426.02
- See*, Exhibit 3F.
5. Petitioner had no prior program violations. Following the guilty verdict the state FS agency imposed a one-year bar on petitioner receiving FS. The Department issued written notice of the FS case closure for one year to the petitioner on May 14, 2015.
  6. On May 14, 2015, the OIG mailed a *FoodShare Overpayment Notice* that informed petitioner that he was overpaid \$799.70 in FS, from February 9, 2011 through December 31, 2011 (claim # [REDACTED]).
  7. Also on May 14, 2015, the OIG mailed a *FoodShare Overpayment Notice* that informed petitioner that he was overpaid \$153.97 in FS, from February 12, 2012 through July 31, 2012 (claim # [REDACTED]).

**DISCUSSION**

The Department seeks to recover FS benefits that were overpaid, on the theory that (1) the petitioner engaged in benefit trafficking, and (2) a circuit court has already determined that such trafficking, which is an FS Intentional Program Violation, occurred. 7 C.F.R. §273.16(b) provides as follows:

- (1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:
  - (i) For a period of twelve months for the first intentional Program violation....

Similarly, the Department’s *FS Handbook*, §3.14.1, provides:

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or

4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

The definition of an IPV is found at 7 C.F.R. §273.16(c):

Intentional Program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) *Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).*

[*emphasis added*]

Wisconsin statutes include a provision that a recipient may not “accomplish the exchange of directly, indirectly, in collusion with others, or individually, food stamp program benefits ... for cash or other consideration that it not food.” Wis. Stat. 946.92(1)(dm). The petitioner has violated this state law provision.

The sanction is only against the individual found guilty. Other family members remain eligible for FS.

Petitioner did not appear for this fair hearing. In a companion hearing decision to this one, FOO-167882, I held that the circuit court proceeding was adequate to establish the IPV against the petitioner. That decision resulted in a closure of the petitioner’s FS case for one year pursuant to the IPV sanction.

The issue in this case is whether the Department has met its burden (preponderance of the credible evidence) of establishing two overpayments totaling \$953.67 (\$799.70 + \$153.97) against the petitioner. For overpayment recovery, claims arising from FS trafficking-related offenses shall be recovered *in the value of the trafficked benefits*. 7 C.F.R. §273.18(c)(2). 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.

The closest thing to a worksheet or breakdown of how the Department concluded that the overpayment amount was \$953.67 is Exhibit 3F. I am not persuaded that the Department met its burden with respect to the transactions other than those identified in Finding #4 above. Accordingly, I will direct the Department to reduce the claim totals to \$426.02.

### **CONCLUSIONS OF LAW**

1. The OIG established that petitioner was overpaid \$426.02 in FS based upon the rule that trafficked FS must be recovered.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the Department with instructions to reduce the two claims in dispute here to a total of \$426.02 for recovery. This action shall be taken within 10 days of the date of this Decision. In all other respects, 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 Wisconsin county where you live/d. 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 6th day of October, 2015

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\sNancy J. Gagnon  
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 7, 2015.

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