



FH
[REDACTED]

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

In the Matter of

[REDACTED] [REDACTED]
Taycheeda Correctional Institute

DECISION ON REHEARING

FOP/168123

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Marinette County Department of Human Services in regard to FoodShare benefits (FS), a hearing was scheduled for September 29, 2015. The petitioner did not appear, and the appeal was dismissed. The petitioner timely filed a rehearing request, which was granted. A hearing was then held on November 25, 2015, by telephone.

The issue for determination is whether the petitioner was overpaid \$194.37 in FS benefits in 2014.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] [REDACTED]
Taycheeda Correctional Institute

Respondent:

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

By: [REDACTED] [REDACTED] fraud investigator
Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of an institution in Fond du Lac County.
2. The petitioner received FS as a household of one person from at least April 2014 through the case closure on October 31, 2014.
3. The petitioner was incarcerated in the Marinette County Jail on September 26, 2014, and has been continuously incarcerated since then. Her FS card was used while she was in jail – twice on October 18, and twice on October 26, 2014. The total amount of these transactions was \$194.37.
4. On June 19, 2015, the Department mailed a *FoodShare Overpayment Notice* and an Intentional Program Violation Waiver form, to the petitioner at her correct current address in the Taycheedah prison. The *Notice* advised that the petitioner had been overpaid \$194.37 in October 2014, because she trafficked/misused her FS.
5. The petitioner misused her FS in October 2014.

DISCUSSION

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. ...

7 C.F.R. § 273.18(a)(ii). The petitioner was ineligible for FS for October 2014 because she was incarcerated. Additionally, she could not have used them in October due to her incarceration. The fact that her FS benefits were accessed while she was incarcerated means that another person had to have both her card and her PIN number. Because the petitioner had to give her PIN number out to the card user, I believe that petitioner was complicit in the card's fraudulent use. Therefore, recovery of the benefits fraudulently accessed is appropriate.

CONCLUSIONS OF LAW

1. The petitioner fraudulently misused her FS in October 2014; recovery of \$194.37 from the petitioner is permissible.

THEREFORE, it is

ORDERED

That the petition is dismissed.

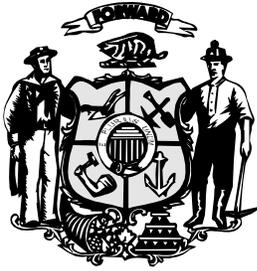
APPEAL TO COURT

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 8th day of December, 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 December 8, 2015.

Marinette County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability