



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/168410

PRELIMINARY RECITALS

Pursuant to a petition filed September 02, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Waupaca County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on December 09, 2015, at Waupaca, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Sherry Blomberg

Waupaca County Department of Social Services
811 Harding Street
Waupaca, WI 54981-2087

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Waupaca County.
2. Petitioner was sent 3 FoodShare overpayment notices, all dated July 20, 2015. Collectively they informed Petitioner that she had been overissued FoodShare in the amount of \$1802.00 during the period of April 1, 2013 through February 28, 2015.

3. The reason for the overissuance alleged here is that Petitioner had been claiming a \$700.00 per month mortgage as a shelter expense since 1999. In January 2015 the agency asked for verification and learned that there was no mortgage. Petitioner had borrowed money from a friend and informally had an understanding with the friend that the friend could have a lien on the property.

### **DISCUSSION**

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare 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 (FSH), §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 FSH, §7.3.1.9. However, overpayments due to agency error may only be recovered for up to 12 months prior to discovery. FSH, §7.3.2.1. Overpayments due to client error may be recovered for up to six years after discovery. *Id.*

Here Petitioner was claiming a shelter expense that she did not have. She may have had a personal loan that she was repaying but there was no mortgage on the property. There is no deduction for personal loan repayments. See generally, FSH Chapter 4.6 and 7 CFR §273.9(d), both concerning FoodShare deductions. I conclude the Petitioner was overissued FoodShare by claiming a shelter expense deduction that does not exist.

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 Petitioner was overissued FoodShare as alleged.

**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 December, 2015

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\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 December 21, 2015.

Waupaca County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability