



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/169859

PRELIMINARY RECITALS

Pursuant to a petition filed November 04, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 01, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$960 for the period of August 13, 2012 – December 31, 2012.

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: Belinda Brown

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. On the following dates, Petitioner's EBT Quest card was used in transactions with [REDACTED] ([REDACTED]): August 13, 2012, October 11, 2012, October 27, 2012, October 30, 2012, December 12, 2012 for a total of \$960.00
3. On February 15, 2013, the owner of [REDACTED] pled guilty to trafficking FS benefits. He admitted that he never had food for sale and exchanged EBT cards for cash in violation of federal and state FS regulations.
4. On August 17, 2015, the agency issued a notice of Intentional Program Violation (IPV) against the Petitioner alleging that her EBT Quest Card was used to traffick benefits with [REDACTED] ([REDACTED]) on the dates and for the amounts noted above. The notice advised her of an Administrative Disqualification Hearing to be held on September 25, 2015 with the Division of Hearings and Appeals. That case is designated as DHA Case No. FOF/167915. Petitioner did not appear for the hearing.
5. On October 12, 2015, the Division of Hearings and Appeals issued a decision finding that the Petitioner committed an IPV. On November 4, 2015, the Petitioner requested a rehearing. On November 24, 2015, the Division of Hearings and Appeals denied the Petitioner's request for a rehearing finding she did not have good cause for failure to appear at the hearing.
6. On October 13, 2015, the agency issued a FoodShare Overpayment Notice to the Petitioner advising her that the agency intends to recover an overissuance of FS benefits in the amount of \$960 from August 13, 2012 – December 31, 2012.
7. On November 4, 2015, the Petitioner filed a request for a hearing in the instant matter.

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 this case, there is a determination that the Petitioner committed an IPV. See DHA Case No. FOF/167915. As a result, the agency must take action to recover an overissuance of benefits to the Petitioner as a result of that IPV. In this case, the agency established that the Petitioner's EBT card was used in five transactions with [REDACTED] totaling \$960. The agency has demonstrated that it must recover this overissuance that resulted from the Petitioner's IPV.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits in the amount of \$960 for the period of August 13, 2012 – December 31, 2012 due to an IPV.

THEREFORE, it is

ORDERED

That the Petitioner's 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 29th day of December, 2015

\sDebra Bursinger
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 29, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability