



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/169965

PRELIMINARY RECITALS

Pursuant to a petition filed November 09, 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 Milwaukee Enrollment Services (the agency) correctly seeks to recover \$850.00 benefits from the Petitioner.

NOTE: Judicial Notice was taken of the complaint, plea agreement and conviction in Federal District



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: Tygene Taylor, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. From September 8, 2011 to January 8, 2012, the Petitioner received \$971.00 per month in FoodShare benefits on the 8th of each month. (Exhibit 2, pg. 11)
3. In November and December 2011, the Petitioner was in possession of her EBT card. (Testimony of Petitioner)
4. On November 9, 2011, the Petitioner's EBT card was used to redeem \$400 in benefits from [REDACTED]. It was used again on December 8, 2011 to redeem \$450 in benefits from [REDACTED]. (Exhibit 2, pgs. 40 and 41)
5. From June 2010 to January 2013, [REDACTED] was not selling food, but was instead redeeming Foodshare benefits for a fraction of face value. (Exhibit 2, pgs. 37-39 – Plea Agreement in U.S. District [REDACTED])
6. On July 27, 2015, the Division of Hearings and Appeals (DHA) conducted a hearing to determine whether the agency correctly concluded that the Petitioner intentionally violated the rules of the FoodShare program by trafficking \$850 in FoodShare benefits between November and December 2011. The Petitioner did not appear for that hearing and on August 17, 2015, DHA issued a decision upholding the IPV determination. (DHA records – Case FOF-166705; Testimony of Ms. Taylor)
7. On August 18, 2015, the agency sent the Petitioner a notice, claim number [REDACTED], advising her she that she was overpaid \$850.00 in FoodShare benefits for the period of November 9, 2011 to December 31, 2011, because she trafficked her FoodShare benefits. (Exhibit 2, pgs. 47-48)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 9, 2015. (Exhibit 1)

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), emphasis added; see also FoodShare Wisconsin Handbook, App. § 7.3.1.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The Petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In the case at hand, Milwaukee Enrollment Services alleges that an overpayment of benefits occurred, because the Petitioner committed an intentional program violation by trafficking her FoodShare benefits.

An IPV is defined at 7 C.F.R. §273.16(c) as intentionally: making a false or misleading statement or misrepresenting; concealing or withholding facts; or committing any act that constitutes a violation of the Food Stamp Act, federal regulations or any Wisconsin statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons or an authorization to participate (ATP) card.

The Department's written policy restates federal law, below:

3.14.1 IPV Disqualification

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or

- 2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

Milwaukee Enrollment Services has met its burden to prove that the Petitioner was selling her FoodShare benefits.

First, the issue was decided in case FOF-16670. Second, the two transactions took place on or about the 8th of the month, when the Petitioner was regularly receiving her benefits. Third, the Petitioner was in possession of her EBT card during the time in question. Fourth, the transactions were in whole dollar amounts. Fifth, during this time, [REDACTED] was no longer selling food; but was instead purchasing EBT benefits for a fraction of face value. As such, the Petitioner had to have been selling her benefits.

“Claims arising from trafficking related offenses will be the value of the trafficked benefits”, as established by the Petitioner’s admission, by adjudication, or by appropriate documentation. 7 C.F.R. 273.18(c)(2)

On November 9, 2011, the Petitioner sold \$400 in benefits from [REDACTED] and she sold \$450 in benefits from [REDACTED] on December 8, 2011. Based upon the foregoing, it is found that the agency correctly seeks to recover an overpayment of \$850, the total value of the two transactions.

CONCLUSIONS OF LAW

The agency correctly seeks to recover an overpayment of \$850.

THEREFORE, it is **ORDERED**

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 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 10th day of December, 2015

\sMayumi M. Ishii
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 10, 2015.

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