



FH

[REDACTED]

STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed December 1, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 23, 2015, by telephone.

The issue for determination is whether the petitioner was overpaid FS benefits from November 1, 2012 through May 31, 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED], Supervisor  
Western IM Consortium, and  
La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.

2. The petitioner applied for and began receiving FS as a household of two persons (self and minor child) on May 29, 2012. On that application he reported employment only at [REDACTED], and monthly income was identified as being \$835.71. An eligibility notice mailed to the petitioner on July 12, 2012, advised him to report to the Department any income increase exceeding \$1,260.83 by the 10<sup>th</sup> of the following month. *See*, Exhibit 2, notice.
3. The petitioner began a new job with [REDACTED] on July 23, 2012, thereby increasing his income. He never reported this additional job to the Department. On October 19, 2012, the petitioner telephoned the Department and reported a raise for the [REDACTED] job, but did not report the [REDACTED] job. The reported raise did not cause household income to exceed \$1,260. On October 29, 2012, the petitioner submitted his FS Six Month Report Form (SMRF) to the agency. The only job listed was the one at [REDACTED]. *See*, Exhibit 3, SMRF.
4. The petitioner's gross earnings exceeded \$1,260 in August and September. Per employer report, his [REDACTED] gross wages averaged \$2,687 monthly for October through December 2012. The FS gross income limit for two was \$2,522. Thus, the [REDACTED] income alone made the petitioner ineligible for any amount of FS during those months. [REDACTED] gross wages averaged \$2,334 from January through March, 2013. When combined with the [REDACTED] income, the result was that he was over the FS gross income limit for January through March. Finally, [REDACTED] gross wages averaged \$2,182 for April and May. When combined with other income, the household was over the FS gross income limit.
5. During his May 2013 FS annual review, the petitioner reported new employment at [REDACTED]. After the [REDACTED] earnings were verified, his household was determined to be over the FS income limit. The FS case closed May 31, 2013.
6. The agency learned of the petitioner's 2012 [REDACTED] income when it received an employer wage match report from the Wisconsin Department of Workforce Development in June 2015. In reviewing the petitioner's FS calculations, the agency determined that the petitioner was income ineligible for any FS from November 2012 through May 2013.
7. On September 16, 2015, a *Foodshare Overpayment Notice* and worksheets were sent to the petitioner, advising that he had been overpaid \$2,201.00 in FS for the 11/1/12 – 5/31/13 period (claim [REDACTED]). Exhibit 7. The overpayment was due to client error. The overpayment began with November 2012, because that is the first month in which the case would have been affected by a timely change report in September 2012. The original overpayment amount was \$2,568 (all FS issued from November through May), but the \$366 in May 2013 benefits were expunged from the petitioner's card account, leaving a \$2,201 overpayment balance.

## DISCUSSION

### I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

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. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

[REDACTED]

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount – (1) Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment ...

(e) *Initiating collection actions and managing claims.*

(1) *Applicability.* State **agencies must begin collection action on all claims** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> ). The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected. There is a one-year time limit, however, for how far back in time the agency may go if the overpayment was due to agency error.

## II. THE PETITIONER WAS OVERPAID FS FOR THE 11/1/12 – 5/31/13 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's income is in dispute. The petitioner was required to report his increased income in September 2012, and he did not do so. His failure to report means that his overpayment for the months in which he received higher income is "client error," rather than "worker error."

The petitioner argues that the overpayment was caused by worker error, rather than client error. At hearing, he claimed that he telephoned in a report of the [REDACTED] job on some unknown date. He has no proof (e.g., phone bill) of this contact. The agency keeps a contemporaneous log of the content of client calls—Case Comments. The Case Comments for this case and timeframe show no report of the [REDACTED] job. *See*, Exhibit 1. Also, there was no believable explanation as to why the petitioner did not list the [REDACTED] job on his October 2012 SMRF. The petitioner seemed to be an intelligent person during the hearing, so I do not believe that he was confused. Further, the petitioner's written hearing submission makes no mention of calling in the [REDACTED] job report; rather he states "I faxed all documents to the processing center, it may have been your system error that did not receive the entire fax." However, no confirmation of a fax from the petitioner regarding [REDACTED] was submitted at hearing either.

As an aside, the petitioner griped about the delay in the Department's receipt of a wage match report from [REDACTED]. If the wage report had been received sooner, the petitioner might have gotten lucky with a worker noticing that he was making too much money for FS. The employer reports wages paid after the fact, on a quarterly basis. [REDACTED] reported fourth quarter 2012 wages to the Department of Workforce

Development in February 2013, and first quarter 2013 wages in April 2013. April 2013 was the second to last month of the petitioner's overpayment. For whatever reason, the wage report from Workforce Development did not come to the agency's attention until June 25, 2015. In any event, the responsibility for timely reporting significant income changes rests with the petitioner, rather than a Department charged with issuing benefits to hundreds of thousands of FS recipients.

Because the overpayment was caused by client error, the agency is allowed to go back to November 2012 in its recovery effort. It may do so here.

### **CONCLUSIONS OF LAW**

1. The petitioner was overpaid \$2,201 FS from November 2012 through May 2013, due to client error.
2. The county agency is correctly pursuing recovery of that overpayment, pursuant to federal law.

**THEREFORE, it is**

**ORDERED**

That 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).

[REDACTED]

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 30th day of December, 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 January 4, 2016.

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