



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/170157

PRELIMINARY RECITALS

Pursuant to a petition filed November 14, 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 9, 2015, by telephone.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid FS from June through October 2015.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: ESS
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 #) is a resident of La Crosse County.
2. The petitioner gave birth in April 2015, creating a household of two persons. She filed an online application for FoodShare and CC on April 8, 2015, and was correctly opened for both programs.

At the time of application, the parties believed that the petitioner would receive zero short-term disability pay for June.

3. On April 22, 2015, the Department mailed eligibility notices to the petitioner, showing (1) that it believed her income would be zero for June, and (2) that she qualified for FS benefits. *See*, Exhibit 4, bottom of p.4.
4. On April 23, 2015, the petitioner reported to the Department that she was returning to work. Shortly thereafter, the Department verified a job return date of May 18, 2015 and the resulting income. However, the Department worker failed to enter the income in the petitioner's case, leaving her income at zero.
5. The petitioner received FS from at least June through October 2015. During the June through October period, the Department paid out \$1,785 (\$357 x 5 months) in FS benefits to the petitioner.
6. After realizing its error, the Department determined that the petitioner's income level made her ineligible for some of the FS benefits issued. *I.e.*, she should have received a \$16 monthly allotment, rather than a \$357 allotment.
7. The petitioner's gross income from employer [REDACTED] is not in dispute. She grossed \$2,158.76 in June, \$2,701.88 in July, and \$2,028.13 in August, 2015.
8. On November 9, 2015, the Department issued an FS *Overpayment Notice* (claim # [REDACTED]) and a worksheet to the petitioner. That *Notice* advised that she had been overpaid \$1,705.00 in FS for the months of June through October, 2015.
9. The petitioner did not apply for W2 cash benefits from March through October 2015.

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 ...

(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 (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 for at least one year after discovery. For overpayments caused by client error, overpayment recovery goes back for multiple years.

II. THE PETITIONER WAS OVERPAID FS FOR THE 6/1/15 – 10/31/15 PERIOD.

Neither the arithmetic of the agency’s overpayment determination nor the amount of the petitioner’s income is in dispute. Rather, the petitioner explained that she had provided all requested information to the agency, and that she did nothing wrong. However, as noted above, the agency must collect the overpaid benefits, even if the overpayment was caused by an innocent misunderstanding or mistake. This mandatory recovery is required under federal law, which means that a state official, such as myself and the county agency, must comply with that requirement.

The petitioner inquired as to whether she should have been eligible for Transitional FS (where a higher income is allowed) due to her recent childbirth. The answer is no. To qualify for Transitional FS, she needed to have a child in her household and be receiving a W2 check prior to the beginning of a Transitional FS period:

5.1.1.1 TFS Introduction

Transitional FoodShare (TFS) benefits automatically extend FoodShare benefit eligibility for 5 months to food units whose Wisconsin Works (**W-2**) cash assistance ends as long as:

1. the member was part of an active **FS** case in the benefit month and the month the last W-2 payment was issued, **and**
2. the member was receiving a W-2 or Tribal TANF payment. This does not include W-2 Trial Job Placements or Transitional Jobs case managed by a W-2 agency.

FSWH, § 5.1.1.1.

CONCLUSIONS OF LAW

1. The petitioner was overpaid FS from June through October 2015, due to agency 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).

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 5th day of January, 2016

\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 January 5, 2016.

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