



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP- 174182

PRELIMINARY RECITALS

On May 6, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3, to challenge a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA). The hearing was held on June 8, 2016, by telephone.

The issue for determination is whether petitioner is liable for a medical assistance overpayment as determined by the agency in the amount of \$1,798.80.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

[REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner applied for FoodShare and medical assistance in June 2014.
3. Petitioner reported no earned income and only child support unearned income.
4. Petitioner was granted MA and FS and informed to report if household income exceeds \$972.50.
5. Another notice is mailed to petitioner on 1/29/15 informing her of her obligation to report household income in excess of \$972.50.
6. On 6/1/15, petitioner completes a renewal of MA and FS and a notice is sent informing her to report any household income exceeding 980.83.
7. In August 2015 the agency learned of a discrepancy between the household income it had budgeted and the earned income reported to the state by employers.
8. On September 8, 2014 petitioner was sent a notice that indicated she was to inform the agency if her income exceeded \$1,705.
9. In September 2014, petitioner returned to work and her September income exceeded \$1,705. Petitioner did not report this income increase.
10. In January 2015, petitioner submitted a six-month report for and did not report her increase to household income.
11. Petitioner's household income exceeded the reporting requirements in every month from September 2014 through September 2015.
12. Petitioner exceeded the eligibility limit for MA from November 2014 through September 2015. All capitation rates paid and provider payments during that period were overpaid.
13. On 4/11/16 the agency sent a notice to petitioner informing her that FS had been overissued from 11/1/14 to 9/30/15 in the amount of \$1,743.
14. On 4/11/16 the agency sent a notice to petitioner informing her that medical assistance had been overissued from 11/1/14 to 9/30/15 in the amount of \$1,798.80.
15. Petitioner appealed.

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.*

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

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.

The agency presented a well-documented and cogent case which established that petitioner's income during each month of the overpayment period exceeded the eligibility threshold. In each month, petitioner received FS and medical assistance to which she was not entitled.

At the time of hearing, petitioner argued that she did not lie and she did not falsify any documents. But, the agency has not alleged that she did and fraud is not required to be proven in order for the agency to establish an overpayment of MA or FS. Petitioner's other argument appears to be that she was never notified of her reporting requirements. The numerous notices mailed to petitioner that provided such notice may have been overlooked by petitioner, but the notice was provided many, many times. That argument is meritless. Petitioner also made vague references to her apartment being remodeled. I presume she was attempting to suggest that she did not receive her mail at some point. This was not convincing.

I see no error in the agency's determination of the MA overpayment as determined by the agency.

CONCLUSIONS OF LAW

Petitioner was overpaid MA from 11/1/14 to 9/30/15 in the amount of \$1,798.80.

THEREFORE, it is

ORDERED

The 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, **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 July, 2016

\s _____
John Tedesco
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 July 5, 2016.

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