



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/174629

PRELIMINARY RECITALS

Pursuant to a petition filed May 25, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by the Marinette County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on June 22, 2016, at Marinette, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the agency correctly seeks to recover FS used when petitioner was incarcerated.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Marinette County Dept. of Human Services
1605 University Drive
Marinette, WI 54143

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Marinette County.
2. Petitioner received FS as a one-person household in 2010 and 2012. She was incarcerated in 2010 from February 3 through April 20 and from May 17 through September 20. She was incarcerated in 2012 from March 1 through March 8.
3. During those incarcerations petitioner's FS card was used to purchase goods for a total of \$994.26

4. By notices dated April 12, 2016, the county agency informed petitioner that she was overpaid a total of \$994.26 in FS during the three incarceration dates, claim nos. [REDACTED] and [REDACTED].

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

The Department now requires county agencies to establish claims for trafficking FS. FS Handbook, App. 7.3.2.4. The claim amount is the value of the FS trafficked. Id., 7 C.F.R. §273.18(c)(2). Allowing another person to use an FS card while a recipient is incarcerated is specifically listed as a trafficking offense in the Handbook section cited here. It is noted that the overpayment claim must be classified as client error, rather than intentional program violation (IPV), unless the county obtains an IPV holding in a separate hearing.

In this case petitioner's incarceration dates are undisputed, and the FS benefit record is clear. Substantial amounts of FS benefits were transacted while petitioner was incarcerated. Petitioner's only response was to claim that she had no knowledge of anyone using her FS card while she was in jail. However, this was not a one-time occurrence; it happened regularly during petitioner's incarceration periods. Without some explanation of why her card was being used when she was incarcerated, I must conclude that the county correctly seeks recovery of the FS used during those periods.

CONCLUSIONS OF LAW

The county correctly seeks recovery of FS benefits used during periods when petitioner was incarcerated.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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 24th day of June, 2016

\sBrian C. Schneider
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 June 24, 2016.

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