

3. Petitioner is sent a notice on February 12, 2016, advising her that she must report if her income exceeds \$980.83.
4. In February, 2015, petitioner begins receiving unemployment compensation, which she did not report to respondent.
5. On December 10, 2015, a FS renewal is completed by phone, and petitioner reports employment with [REDACTED] and [REDACTED], [REDACTED], [REDACTED]. Income verification is not received prior to December 18, 2016, and on that date respondent mailed petitioner a notice advising her that her FS benefits will end as of December 31, 2015.
6. Respondent calculated a FS overpayment based upon historical wage information provided by petitioner's two employers, concluding that petitioner was overpaid \$994.00 during the period of July 1, 2015, to December 31, 2015.

DISCUSSION

If an FS overpayment occurred as alleged by the respondent, the agency is required to 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.

The amount of FoodShare one receives depends upon household size and net income. A recipient must report any change in income large enough to affect benefits within 10 days. Agencies must then act on that change the month after it is reported. 7 CFR § 273.12(a)2 and (c)(2). Petitioner failed to report her Unemployment income, assuming that, as a government benefit, the respondent would have been notified. The respondent reported that it does receive certain Unemployment information, but that it is still the petitioner's responsibility to maintain up-to-date information regarding her employment situation. The respondent acknowledges that at least a portion of the overpayment is related to agency error, not petitioner's error. Petitioner also failed to timely report to the respondent her return to work with [REDACTED], [REDACTED], [REDACTED]. Petitioner again explained that she reported that to Unemployment, and did not realize that she needed to report that to the respondent as well.

In any event, and despite the agency error classification, however, petitioner remains liable to repay the overpayment. This is because state FoodShare agencies must "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all overpayments, regardless of whose error caused the overpayment. Because the petitioner received more FoodShare than she was entitled to, she must repay that amount.

The arithmetic of the agency's overpayment determination is not 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 the county agency must comply with that requirement.

CONCLUSIONS OF LAW

The FoodShare agency correctly determined that the petitioner must repay an overpayment of FoodShare.

THEREFORE, it is

ORDERED

The petitioner's 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 August, 2016

\s _____
Peter McCombs
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 August 5, 2016.

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