



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FOP - 174897

PRELIMINARY RECITALS

On June 10, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03, to contest a decision by the Dane County Dept. of Human Services regarding an overpayment of FoodShare benefits (FS). The hearing was held on July 14, 2016, by telephone.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid \$2,550 in FoodShare benefits due to a non-client (agency) error in budgeting of child support income.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI53703

By: [Redacted]

Dane County Dept. of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Redacted]) is a resident of Sauk County.

2. The petitioner was the casehead of an assistance group receiving FS as a household of three persons from at least November, 2014, through April, 2015, and a two person household from at least May – October 2015.
3. On October 28, 2015, the county agency worker first discovered that the petitioner's FS budget had been using only approximately half of her unearned income payments being received through the child support enforcement database. The agency was budgeting \$622.12 per month as child support and maintenance, but the petitioner was actually receiving \$1,262.40 per month. See, Exhibit #4. And see, Exhibits #5 & #6.
4. On May 16, 2016, the agency issued a FoodShare Overpayment Notice and worksheets to the petitioner, informing her that she had been overpaid \$2,550 in FS for the 11/01/14 – 10/31/15 (claim [REDACTED]). See, Exhibit #8. The overpayment was due to non-client (agency) error in incorrectly budgeting the petitioner's unearned support income too low.
5. The only change in the FS budgets for the test period made by the agency in the overpayment determination was adding in the correct total actual child support/maintenance income the petitioner received, and she admitted at the hearing that the agency correctly computed this income in the test period.
6. The petitioner filed an appeal with the Division of Hearings & Appeals on June 10, 2016, asserting that the agency had misled her into believing that she was eligible for the FS she was paid, and that she should not be liable for the agency's error in counting her unearned income as that was the agency's mistake in only counting her child support as if paid monthly at a rate about ½ of what she was actually receiving from the KIDS payment system.
7. The petitioner did complete a six month report form on April 5, 2015, in which she indicated that she received child support of about \$284.61 *monthly* for herself and \$337.60 for her minor daughter also *monthly*. See, Exhibit #7, at p. 4. She was actually receiving those sums bi-weekly.

DISCUSSION

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.

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 a state official, such as myself and the county agency, must comply with that requirement.

In addition, at the mid-point in this overpayment, she did clearly file a six month report form that underreported her support income as monthly, when it was actually nearly double the amount reported because she was receiving the sums biweekly, not monthly. See, Exhibit #7, at p. 4. In addition, the KIDS report makes it clear that she *did* receive the unearned income the agency subsequently discovered and budgeted in the overpayment matrix. See, Exhibits #4, #6 and #5.

The petitioner admitted that the computations appeared to be accurate, but asserted that the agency misled her into believing that she was eligible and she argues that the defense of equitable estoppel should prevent the agency from being able to recover any overpayment from her. This issue is equitable in nature, i.e. it is based on what fairness might be thought to require. An ALJ does not possess any equitable powers but must apply the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS).

"An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); see also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985).

"As a general matter, an administrative agency has only those powers as are expressly conferred or necessarily implied from the statutory provisions under which it operates [citation omitted]". *Brown County v. DHSS Department*, 103 Wis.2d 37, 43, 307 N.W.2d 247 (1981). "An agency or board created by the

legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978.)

Thus, I cannot make a determination on the basis of fairness. And if I could, I would not find this action to be unfair. First, she received FS to which she was not entitled under the means testing formulas applicable to FS benefits determination, be given her actual income. Second, she clearly reported her income incorrectly for at least the last six months of the twelve month overpayment via the erroneous Six Month Report Form. See, Exhibit #7. Nothing shows that this was an intentional error, but error it was nonetheless. The agency has chosen only to pursue recovery for twelve months prior to discovery. There is certainly an argument that it could have pursued a much long recovery period because of this relevant error by the petitioner in reporting her unearned income in the April, 2015, SMRF.

I can find no error in the overpayment determination made here by the agency. Nor has the petitioner pointed to any specific error in the non-client error overpayment determination. The appeal is dismissed, and the overpayment determination is sustained.

CONCLUSIONS OF LAW

The petitioner was overpaid \$2,550 in FS from November, 2014, through October, 2015, due to agency error in budgeting her unearned income.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be, and the same hereby 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

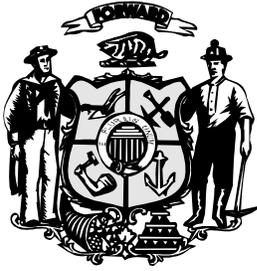
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 15th day of July, 2016

\s _____
Kenneth D. Duren
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 July 15, 2016.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability