



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 175820

PRELIMINARY RECITALS

Pursuant to a petition filed on July 28, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit regarding FoodShare benefits (FS), a hearing was held on August 18, 2016, by telephone.

The issues for determination are whether the agency properly determined that the Petitioner was overpaid Wisconsin FoodShare benefits in the amount of \$2,266 for the period of March 14 - July 31, 2016 and, if so, whether she is required to repay that amount.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) has been a resident of Milwaukee County since at least March of 2016.

2. Prior to March of 2016, petitioner resided in the State of Washington.
3. While residing in Washington, petitioner applied for and received Supplemental Nutrition Assistance Program (SNAP) benefits.
4. Petitioner did not notify the Washington SNAP agency that she was relocating to Wisconsin.
5. Petitioner applied for Wisconsin SNAP benefits (i.e., “FoodShare”) on March 14, 2016. Petitioner filed her application via the on-line ACCESS tool with the assistance of an agency caseworker. The application included a question regarding whether petitioner was currently receiving SNAP benefits. That question was answered, “no.” Petitioner affixed an electronic signature to that application and by doing so, certified that the information contained in the application was correct and complete to the best of her knowledge.
6. Petitioner received Wisconsin FoodShare benefits in the total amount of \$2,266 for the period of March 14, 2016 – July 31, 2016.
7. For the period of March 1, 2016 – July 31, 2016, petitioner received Washington SNAP benefits in the total amount of \$850.01.
8. On July 14, 2016, the department’s Office of Inspector General received a report from the State of Washington that petitioner had received SNAP benefits from Washington for the period of October 1, 2015 – July 31, 2016.
9. Based on benefit usage reports from both Wisconsin and Washington, the department concluded that petitioner used both SNAP benefits issued by the State of Washington and FoodShare benefits issued by the State of Wisconsin after she had relocated to Wisconsin. Those usage reports include a variety of data including but not limited to the dates on which benefits were used and the retail locations where those benefits were used.
10. On July 19, 2016, the department issued a FoodShare Overpayment Notice finding that petitioner was not eligible for the \$2,266 of FoodShare benefits she received in Wisconsin for the period of March 14 – July 31, 2016 (Claim # [REDACTED]).

DISCUSSION

The federal regulations that govern the FoodShare (“FS”) program require the department to take action to establish a claim against any household that received an overpayment of FS regardless of whether that overpayment occurred as a result of 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); FoodShare Wisconsin Handbook, § 7.3.2. Overpayments due to “agency error” may only be recovered if they were issued during the twelve months prior to the date the agency discovered the overpayment. FoodShare Wisconsin Handbook, § 7.3.2.1. Overpayments due to “client error” may only be recovered if they were issued during the six years prior to the date the agency discovered the overpayment. *Id.* In other words, a FS recipient who receives a FS benefit overpayment during the twelve months prior to the department’s discovery of that overpayment may be required to repay the overpaid benefits regardless of who bears the “fault” for causing the overpayment.

Here, the alleged overpayment occurred in the month of discovery (i.e., July, 2016) and during the four months immediately prior to the month of discovery (i.e., March – June, 2016). The department was therefore within the permissible time period to seek recovery regardless of whether the overpayment occurred as a result of client or agency error. And, petitioner must therefore repay any benefits that she was overpaid during that time period.

The federal regulations further provide that a person cannot receive FoodShare/SNAP benefits from two different “project areas” at one time. A project area includes the jurisdiction that issues FoodShare/SNAP benefits and can be a specific county, an entire state, or another entity. 7 CFR §273.3(a); 7 CFR §271.2. State policy, in turn, provides that, “Persons moving to Wisconsin from another state are not eligible to receive duplicate FoodShare benefits.” FoodShare Wisconsin Handbook § 3.4.1. The next issue that must be determined therefore is whether petitioner received both Wisconsin FoodShare and Washington SNAP benefits during the alleged overpayment period (i.e., March 14 – July 31, 2016).

Petitioner acknowledged that she received and used Wisconsin FS benefits during the overpayment period. And, petitioner did not dispute that the State of Washington *issued* SNAP benefits to her during that same overpayment period. Petitioner however asserted that she informed the agency caseworker who assisted her with the completion of her Wisconsin FS application that she was receiving SNAP benefits in Washington. In other words, petitioner suggested that any overpayment of Wisconsin FS benefits was due to the error of the agency caseworker. However, petitioner electronically signed the Wisconsin FS application and, in doing so, verified the accuracy of that application’s contents. Regardless of whether an agency worker erred, whether Petitioner did so, or whether they share responsibility, petitioner was not eligible to receive the \$2,266 of Wisconsin FoodShare benefits issued to her while the State of Washington continued to issue her SNAP benefits during the period of March 14 – July 31, 2016.

I also note that petitioner testified that her wallet, including her Washington SNAP card, was stolen in Wisconsin sometime in March of 2016. In offering that testimony, petitioner implicitly asserted that, although Washington issued benefits to her, she did not actually *receive or use* those benefits. However, the usage report from the State of Washington (Ex. 9) lists several of the same retail locations that appear on the State of Wisconsin usage report (Ex.5). And, petitioner acknowledged that the State of Wisconsin usage report was largely accurate. It strains credulity that an individual stole petitioner’s wallet and then used her Washington SNAP card to make purchases at the very same locations where petitioner made purchases using her Wisconsin FoodShare card. Moreover, the individual who allegedly stole petitioner’s wallet would have needed to know or accurately guess petitioner’s personal identification number (PIN) in order to use her Washington SNAP card.

Finally, I note for the record that respondent submitted ten numbered exhibits to this administrative law judge and that respondent’s witness credibly testified that she also mailed those exhibits to petitioner. Because the hearing was conducted by telephone, prior to taking any testimony from petitioner, I asked her whether she had received those ten exhibits from the respondent and if she had them with her. Petitioner answered affirmatively. During the course of the petitioner’s testimony, I asked her to review Exhibit 5 (the Wisconsin FS usage report). Petitioner confirmed that she had Exhibit 5 and offered testimony about the contents of that exhibit. In addition, during the course of the hearing, petitioner indicated that she was looking at e-mail correspondence from the State of Washington. Respondent’s Exhibits 7 and 8 both included e-mail correspondence from the State of Washington. I later asked petitioner to bring her attention to Exhibit 9 (the Washington SNAP usage report). At that point, petitioner asserted that she only had three exhibits and that she did not have the Washington usage report. Based on both respondent’s sworn testimony that she sent all ten exhibits and based on petitioner’s initial confirmation that she in fact had those exhibits, I am satisfied that petitioner was in fact able to review the evidence submitted by respondent.

CONCLUSIONS OF LAW

The department correctly determined that Petitioner was overpaid \$2,264 in FoodShare benefits for the period of March 14 – July 31, 2016 (Claim # [REDACTED]).

THEREFORE, it is

ORDERED

The petition for review has been 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 18th day of August, 2016

\s _____
Teresa A. Perez
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 19, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability