



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/170386

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 25, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 05, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$1,468 for the period of January 1, 2013 – April 30, 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED]  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On or about November 1, 2012, the Petitioner submitted a renewal application for FS benefits. He reported a household of two that included himself and his minor daughter. No earned income was reported. On November 2, 2012, the agency issued a Notice of Decision to the Petitioner

informing him that his application for FS benefits was approved effective November 1, 2012 and that he would receive \$367/month in benefits. The notice advised him that this determination was based on household income of \$350/month from child support and rent of \$300/month. The notice further informed him of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if gross monthly household income exceeded \$1,640. He was further advised to report any change in address.

3. On August 20, 2013, the agency received a wage discrepancy alert for the Petitioner’s case. [REDACTED] of Wisconsin reported income to the State of Wisconsin for the Petitioner. On or about August 20, 2013, the agency issued a request to the Petitioner’s employer for wage verification. The information was due August 30, 2013.
4. On September 29, 2015, the agency received wage verification from [REDACTED]. The verification reported the Petitioner received the following gross wages:
 

November, 2012	\$2,460
December, 2012	\$2,895
January, 2013	\$2,770
February, 2013	\$3,775
March, 2013	\$3,605
April, 2013	\$2,847.50
5. On October 9, 2015, the agency issued a FS Overpayment Notice to the Petitioner informing him that the agency intends to recover an overissuance of FS benefits in the amount of \$1,468 for the period of January 1, 2013 – April 30, 2013 based on the Petitioner’s failure to report earned income to the agency.
6. On November 25, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

**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.

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.

In this case, the agency alleges an overpayment as a result of the Petitioner’s failure to comply with the requirement to report to the agency if household income exceeded the program limit. Specifically, in November, 2012 and continuing through April, 2013, the wage verification from the Petitioner’s employer demonstrates that the Petitioner’s gross earned income exceeded \$1,640/month. The Petitioner was required to report to the agency by December 10, 2012 that his November income had exceeded the

program limit. This would have caused the agency to re-determine Petitioner's FS benefits beginning January 1, 2013.

The evidence demonstrates that the Petitioner did not report his earned income to the agency as required. The agency produced a worksheet to demonstrate how it calculated the overpayment. In each month of the overpayment period of January – April, 2013, the Petitioner's household income exceeded the program limit of \$2,522/month for a household of two. Therefore, the agency seeks to recover all FS benefits issued to the Petitioner during that period.

At the hearing, the Petitioner did not dispute that he did not report his earned income to the agency as required. He did not dispute the actual wages reported by his employer. I note that the Petitioner testified that though he had only reported one child in his household, he actually had three children in his household. He stated that a custody agreement gave him joint custody but that he had primary placement of the children. The Petitioner did not present any evidence to support this statement or any explanation why he did not report three children in the household when he completed the November application. Therefore, I conclude the agency properly reviewed the overpayment based on a household size of two.

Based on the evidence submitted, I conclude the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$1,468 for the period of January 1, 2013 – April 30, 2013 based on the Petitioner's failure to report earned income to the agency as required.

### CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$1,468 for the period of January 1, 2013 – April 30, 2013 based on the Petitioner's failure to report earned income to the agency as required.

**THEREFORE, it is**

**ORDERED**

That 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, 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 Milwaukee,  
Wisconsin, this 21st day of January, 2016

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\sDebra Bursinger  
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 January 21, 2016.

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