

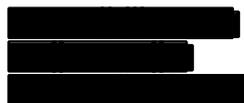


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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

In the Matter of



**DECISION**  
Case #: FOP - 173234

**PRELIMINARY RECITALS**

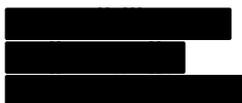
Pursuant to a petition filed on March 29, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on July 21, 2016, by telephone.

The issue for determination is whether Petitioner was overpaid FoodShare benefits and whether the agency correctly determined the period of the overpayment.

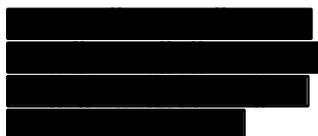
There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Petitioner's Representative:



Respondent:

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

By: 

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

The hearing for this matter was combined with a BadgerCare+ overpayment appeal filed by Petitioner (#MOP-173235) as well as a FoodShare overpayment appeal (#FOP-173236) for Petitioner's daughter. Those appeals are the subject of separate decisions to be issued at or about the time of this decision.

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner was sent 2 FoodShare overpayment notices, both dated February 19, 2016, that informed Petitioner that she had been overissued FoodShare in the total amount of amount of \$8968.00. One notice indicated that Petitioner had been overissued FoodShare in the amount of \$6209.00 during the period of November 1, 2014 to October 31, 2015 (claim # [REDACTED]) and the other that Petitioner was overissued FoodShare in the amount of \$2759.00 during the period of November 1, 2015 to January 31, 2016 (claim # [REDACTED]).
3. The reason for the overissuance alleged here is that Petitioner did not correctly report her household composition; specifically, that her ex-husband ([REDACTED]) was in the home. They married in 2009 but divorced in 2010. [REDACTED] was incarcerated on occasions in 2011, 2012 and 2013 but when released lived with Petitioner. This was not reported to the agency, e.g., on FoodShare applications, renewals or six month report forms. Petitioner and [REDACTED] do have children in common. Their youngest was born on September 1, 2015 per CARES demographic records.
4. [REDACTED] was incarcerated for a total of 11 days in 4 different instances during the time relevant here.

### DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare 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 (FSH), §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 FSH, §7.3.1.9. However, overpayments due to agency error may only be recovered for up to 12 months prior to discovery. FSH, §7.3.2.1. Overpayments due to client error may be recovered for up to six years after discovery. *Id.*

Federal regulations provide that parents must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified. 7 C.F.R. §273.1(b)(i). This is echoed in the Wisconsin FS policy that provides:

To determine who is non-financially eligible for FoodShare, you must start with all household members.

#### **H - Households**

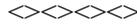
Households consist of all persons living in, or temporarily absent from, the same Residence. It is important to enter all household members into CWW to ensure that the correct eligibility determination is made in CARES.

...

#### **U - Food Units**

One or more persons who live in the same household and purchase and prepare food together for home consumption, or individuals who must be included in the same food unit because of relationship rules (3.3.1.3).

*FS Handbook* §3.3.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.



The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or stepparents and their children under the age of 22, **and**
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

*FS Handbook* §3.3.1.3.

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that were sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused FoodShare to be issued for which the client was not otherwise eligible; documentation of the benefits actually paid, Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, etc. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. See, generally, 7 CFR §273.15 and §273.18; FoodShare Wisconsin Handbook, §7.3.1.8. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals. The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Further, all adult members of a household are jointly and severally liable for FoodShare overissuances. An adult is defined as anyone age 18 and over. *FSH*, §7.3.1.2.

The only issue here is where JA was living during the period of the overpayment alleged here. The amount of income was not raised as an issue.

Petitioner testified that ■■■ did not live with her and there was, therefore, no need to report his presence or income. She points to probation and parole agent visit with ■■■ which were at the home of ■■■’s mother. She also notes that she and ■■■ had a rather contentious relationship, that ■■■ is abusive and controlling and that she had a restraining order preventing him from contact with her. Her mother testified that she was at the house often and did not see that ■■■ was there.

Petitioner’s testimony was contradicted by ■■■, his mother and the findings of an investigator. The investigator testified that ■■■ told him that he was living with Petitioner when not incarcerated. ■■■ testified that he was with Petitioner when not incarcerated until about July 2015. At that point he left as he believed Petitioner was in contact with an ex-boyfriend. He testified that he did come back for about a month in September 2015 after the birth of the daughter of Petitioner and ■■■ but that it did not work and he again left. He also stated that he reported his mother’s address to the probation agent because of the restraining order and would have visits there. This matched statements ■■■ made to the investigator. ■■■’s mother testified that ■■■ did not live with her but with Petitioner. She and ■■■ admit that they colluded to mislead the probation agent. Finally, the ■■■ investigator also obtained statements from neighbors who stated that ■■■ lived with Petitioner but would not provide their names as they apparently indicated fear of Petitioner – I have not given those any weight here though I do note that when they were interviewed in December 2015 they did tell the investigator that they had not seen ■■■

much for several weeks which does lend some support to his statement that he left for good about a month after the baby was born.

Petitioner's daughter testified for Petitioner but did not completely contradict the testimony of [REDACTED]. She stated that [REDACTED] would come to the house at random times for up to a couple of weeks at a time.

I am upholding the overpayment for the period of November 1, 2014 through September 30, 2015. Though the relationship between Petitioner and [REDACTED] was undoubtedly tumultuous, he was with Petitioner during this period except when they were fighting and when he had to 'pretend' to live with his mother for the probation visits. [REDACTED] and Petitioner had a child born on September 1, 2015. [REDACTED] and his mother both admit they lied to a state probation agent. This is a statement against self-interest. [REDACTED] has joint liability and again his admissions here are against his self-interest. Petitioner's daughter's testimony does not really contradict [REDACTED]'s testimony. Conversely, Petitioner's own testimony is so self-interested that I did not find her credible. If you are receiving the taxpayer funded public FoodShare benefit you have an obligation to report household composite and income accurately.

As I found [REDACTED] to be the most credible witness I am, however, reversing the overpayment for the period from October 1, 2015 forward. I believed him in that he and Petitioner tried to reconcile for a month after the birth of their youngest but it did not work. As the youngest was born on September 1, 2015 this puts him out of Petitioner's home as of October 1, 2015. This has the effect of eliminating claim # [REDACTED] entirely and reduces claim # [REDACTED] by \$806.00 – the October 2015 overpayment. This leaves an overpayment of \$5403.00.

For Petitioner's benefit the following describes repayment provisions:

#### 7.3.2.12 Repayments

A member who makes a repayment agreement may not be subject to tax intercept as long as he or she is meeting the conditions of the agreement. If a member's repayment agreement becomes delinquent, which is defined as three missed payments over the life of the debt and has been sent three dunning, or past due, notices, he or she is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments.
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

### **CONCLUSIONS OF LAW**

That the evidence does demonstrate that Petitioner was overissued FoodShare for the period of November 2014 to September 30, 2015 as alleged but not for the period of October 1, 2015 to January 31, 2016.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency with instructions to rescind FoodShare overpayment claim # [REDACTED] (\$2759.00 for the period of 11/1/15 to 1/31/16) and adjust claim # [REDACTED] downward by \$806.00 (the amount of the claim for October 2015). This must be done within 10 days of the date of this Decision.

In all other respects, this 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 Milwaukee,  
Wisconsin, this 11th day of August, 2016

\s \_\_\_\_\_  
David D. Fleming  
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 11, 2016.

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

