



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/173590

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 11, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on May 04, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$2,641 from the Petitioner for the period of October 1, 2014 – July 31, 2015 due to client failure in failing to report earned income.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



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Respondent:

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

By:   
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. On May 15, 2014, the Petitioner completed a FS renewal. She reported a household size of two. She reported her employment with , 9 hours/pay period @ \$10/hour. She also

- reported receiving child care payments of \$737.45/month. She submitted pay statements dated April 11, 2014 and April 25, 2014 from [REDACTED].
3. On June 2, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive \$268/month in FS benefits effective July 1, 2014. The notice informed her that this was based on earned income from [REDACTED] of \$194.79/month and child support of \$737.45 for total gross monthly household income of \$932.24. The notice also advised the Petitioner of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income exceeded \$1,681.
  4. On June 26, 2014, Petitioner started employment at [REDACTED].
  5. On October 7, 2014, the Petitioner completed a Six Month Report Form (SMRF). She answered "no" to the question of whether there had been a change in her rate of pay or hours worked at [REDACTED].
  6. On February 15, 2015, Petitioner started employment with [REDACTED].
  7. On April 29, 2015, Petitioner's employment at [REDACTED] ended.
  8. On May 6, 2015, the Petitioner completed a FS renewal. Petitioner reported her only source of income was child support. She reported she was no longer employed.
  9. On May 8, 2015, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits of \$299/month effective June 1, 2015. The notice informed her that this was based on unearned income of \$836.45/month from child support. The notice also informed her that she must report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly household income exceeded \$1,705.
  10. On June 10, 2015, the agency received a wage alert regarding the Petitioner.
  11. On June 11, 2015, the agency issued a Notice of Proof Needed to the Petitioner requesting employment and wage verification with a due date of June 22, 2015.
  12. On June 25, 2015, Petitioner's employment with [REDACTED] ended.
  13. On June 29, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end on August 1, 2015 because she failed to provide required verification. The Petitioner's FS case closed on July 31, 2015.
  14. On July 13, 2015, Petitioner started employment with [REDACTED].
  15. The agency verified that the Petitioner received child support payments as follows:

July, 2014 – October, 2014	\$757/month
November, 2014	\$771.68
December, 2014	\$964.60
January, 2015 – March, 2015	\$771.68
April, 2015	\$964.60
May, 2015 and June, 2015	\$771.68
July, 2015	\$964.60
  16. On February 9, 2016, the agency received employment and wage information for the Petitioner's employment at [REDACTED] from The Work Number. Petitioner's wages were reported as \$527.62 for July, 2015.
  17. On February 16, 2016, the agency received employment and wage verification for the Petitioner from [REDACTED]. The employer reported the Petitioner's wages as follows:

March, 2015	\$ 101.25
May, 2015	\$1,353.75
June, 2015	\$1,449.50
July, 2015	\$ 112,00

18. On February 17, 2016, the agency received employment and wage verification for the Petitioner from [REDACTED]. The employer reported the Petitioner's wages as follows:

July, 2014	\$ 817.61	January, 2015	\$1,797.90
August, 2014	\$1,972.53	Feb., 2015	\$1,345.60
Sept, 2014	\$1,161.22	March, 2015	\$1,289.84
October, 2014	\$1,261.97	April, 2015	\$1,009.20
Nov. 2014	\$1,256.39	May, 2015	\$ 336.40
Dec., 2014	\$1,264.81		

19. Petitioner's total gross monthly income, including earned income from all sources and child support payments were as follows:

July, 2014	\$1,574.61	January, 2015	\$2,569.58
August, 2014	\$2,729.53	February, 2015	\$2,117.28
Sept., 2014	\$1,918.22	March, 2015	\$2,162.77
October, 2014	\$2,018.97	April, 2015	\$1,973.80
Nov., 2014	\$2,028.07	May, 2015	\$2,515.83
Dec., 2014	\$2,229.41	June, 2015	\$2,221.18
		July, 2015	\$1,604.22

20. On March 24, 2016, the agency issued a FS Overpayment Notice and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$2,641 for the period of October 1, 2014 – July 31, 2015 due to her failure to report earned income.

21. On April 11, 2016, 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").<sup>7</sup> 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.*

At the hearing, the Petitioner did not dispute that she did not report all of her various employment or report when her gross household income exceeded the reporting requirements. She testified that she doesn't read well and therefore did not understand the reporting requirements. She stated that she had never received FS benefits prior to August, 2014 and wasn't familiar with reporting requirements.

The agency presented sufficient evidence to demonstrate that the Petitioner failed to comply with reporting requirements for various employers and for her gross household income. Though the Petitioner may not have been able to read the notices well, she is expected to comply with the FS regulations to report employment and income. The Petitioner presented no evidence to dispute the gross household income information submitted by the agency and she did not dispute that she did not report to the agency when she obtained new employment or when her gross household income exceeded reporting requirements. I have reviewed the agency's calculations and find no error. The Petitioner's gross household income exceeded the reporting requirement in August, 2014. She was required to report this to the agency by September 10, 2014 which would have impacted her benefits beginning October 1, 2014.

Based on the information provided, I conclude the agency properly seeks to recover an overissuance of FS benefits in the amount of \$2,641 for the period of October 1, 2014 – July 31, 2015.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover an overissuance of FS benefits in the amount of \$2,641 for the period of October 1, 2014 – July 31, 2015.

**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**

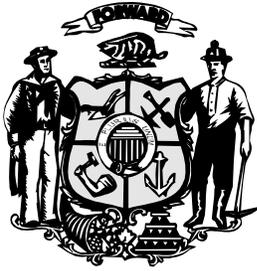
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 2nd day of June, 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 June 2, 2016.

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