



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FOP - 174051

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on May 5, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department regarding FoodShare benefits (FS), a hearing was held on August 9, 2016, by telephone.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits to the Petitioner in the amount of \$393 for the period of January 1, 2015 – February 28, 2015.

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]  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On August 28, 2014, the Petitioner's husband completed a FS renewal. He reported himself and the Petitioner in the household. The only household income that was reported was the Petitioner's

SSI benefits of \$721/month. He reported he would start receiving unemployment benefits in the near future.

3. On August 29, 2014, the agency issued a Notice of Decision to the Petitioner’s husband informing him that he and the Petitioner were approved for FS benefits of \$347/month effective September 1, 2014. The notice further informed him that this was based on gross household income of \$721/month from Petitioner’s SSI benefits and rent of \$550/month. In addition, the notice informed him of the requirement to report to the agency by the 10<sup>th</sup> days of the next month if monthly gross household income exceeded \$1,681.

4. In October, 2014, the Petitioner’s husband started new employment with [REDACTED]. On February 12, 2015, the agency received information that the Petitioner’s husband was employed through [REDACTED]. Verification of employment and income was requested. On February 21, 2015, the agency received a statement of Petitioner’s husband’s actual wages from [REDACTED]. His actual gross wages were as follows:

October, 2014	\$ 745.11
November, 2014	\$1,257.90
December, 2014	\$ 925.10
January, 2015	\$1,050.00
February, 2015	\$ 201.00

5. Effective February 1, 2015, the Petitioner’s SSI benefits increased to \$733/month.

6. Based on the wage information from [REDACTED] and the Petitioner’s SSI benefits, the agency determined the gross household income for the Petitioner and her husband was as follows:

October, 2014	\$1,466.11
November, 2014	\$1,978.90
December, 2014	\$1,647.10
January, 2015	\$1,771.00
February, 2015	\$ 934.60

7. On April 8, 2016, the agency issued a Notice of FS Overpayment and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$393 for the period of January 1, 2015 – February 28, 2015 due to client error in failing to report earned income.

8. On May 5, 2016, the Petitioner filed a request for a hearing 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 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.

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

The agency determines household eligibility and allotments for FS based on who is included in the “food unit.” FSH, § 3.3.1. The “food unit” is defined as: “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). This group is tested for eligibility together.* Id. According to the FSH, 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.

FSH, § 3.3.1.3 and 7 CFR 273.1(b)(1).

With regard to overpayments, all adults in the food unit at the time the overpayment occurred are liable for the repayment of the overpaid FoodShare benefits. FSH, § 7.3.1.2 and 7 CFR 273.18(a)(4)(i).

In this case, the Petitioner testified that she and her husband are married and live together but they are separated and live on separate floors of the home. The Petitioner testified that she never asked her husband to get FS benefits for her, never gave him permission to apply on her behalf and never got any FS benefits. She stated that they do not prepare meals together. She does not feel that she should be responsible for this overpayment when she did not receive benefits and did not know anything about her husband’s application for them.

I do not have any reason to doubt the Petitioner’s testimony. However, the FS regulations require spouses that live together to be in the same food unit. Therefore, the agency properly included her in the determination of eligibility and allotment for FS. Her inclusion in the food unit also means that she is liable for any overpayment. The Petitioner seeks an equitable remedy in this case to be relieved of liability for the overpayment. As a hearing examiner, I do not have the authority to act in equity but must apply the facts to the regulations as they written.

With regard to the overpayment, the agency’s evidence demonstrates that the Petitioner’s gross household income exceeded reporting requirements in November, 2014. Therefore, the Petitioner and/or her husband were required to report the increased income to the agency by December 10, 2014. This would have impacted the household’s FS benefits beginning in January, 2015.

I reviewed the agency’s worksheets and determinations of the correct amount of FS benefits the Petitioner’s household was entitled to receive based on actual gross income. I find no error in those calculations.

Based on the evidence presented, I conclude the Petitioner is a liable adult member of the household’s FS food unit and the agency properly seeks to recover an overissuance of \$393 from the Petitioner for the period of January 1, 2015 – February 28, 2015.

**CONCLUSIONS OF LAW**

The agency properly seeks to recover an overissuance of \$393 from the Petitioner for the period of January 1, 2015 – February 28, 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, **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 16th day of August, 2016

\s \_\_\_\_\_  
Debra 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 August 16, 2016.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability