



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION  
FOP- 174360

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**PRELIMINARY RECITALS**

On May 11, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03, to challenge a decision by the Racine County Department of Human Services regarding FoodShare benefits (FS). The hearing was held on June 16, 2016, by telephone.

The issue for determination is whether Petitioner was overpaid FoodShare benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services

[REDACTED]

Racine County Department of Human  
Services  
1717 Taylor Ave  
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. Petitioner was sent a FoodShare overpayment notice, dated May 3, 2016, that informed Petitioner that she had been overissued FoodShare in the amount of \$822.00 during the period of January 1, 2016 through March 31, 2016.
3. The reason for the overissuance alleged here is that the agency made a mistake in the calculation of Petitioner's FoodShare allotment for the period involved by entering her rent expense into the FoodShare calculation formula twice.
4. With rent counted once Petitioner's FoodShare allotment for the months involved here should have been \$473.00 but was instead calculated to be \$747.00. The difference is the overpayment ( $\$747 - \$473 = \$274 \times 3$  months).

### **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.*

It is quite clear that this was an agency error. Nonetheless, overpayments have to be recovered even in cases of a mistake. And, again, the look back for an agency error is 12 months. The agency is required by law to recover this overpayment.

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 as alleged.

**THEREFORE, it is**

**ORDERED**

That 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 8th day of July, 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 July 8, 2016.

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