



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FOO - 175006

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 15, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services regarding FoodShare benefits (FS), a hearing was held on July 19, 2016, by telephone.

The issue for determination is whether petitioner's FS were properly reduced due to recovery of an overpayment.

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] ESS  
Fond Du Lac County Department of Social Services  
50 N Portland St  
Fond Du Lac, WI 54935

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. Petitioner had an FS overpayment (claim # [REDACTED]) and had been making payments on that claim by way of recoupment of her current FS benefits. See Exhibit 2.

3. On June 15, 2016, the petitioner was notified that her supplemental FS of \$228 would be reduced by \$228 effective June 2016 to recover the overpayment described in Finding of Fact #2.

**DISCUSSION**

Federal law requires *all* FS overpayments be recovered, regardless of whether the recipient or the agency is at fault. Those regulations provide, in relevant part, as follows:

**(a) Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR §273.18 (emphasis added);FS Handbook, §7.3.2.6.

The FS agency is authorized to begin recouping an overpayment pursuant to the federal regulations which direct the county to “automatically collect payments for any claim by reducing the amount of monthly benefits that a household receives.” 7 CFR §273.18(g)(1)(i). That is what the agency correctly did in this case.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

**CONCLUSIONS OF LAW**

Petitioner’s FS were properly reduced due to recovery of an overpayment.

**THEREFORE, it is** **ORDERED**

That the petition for review herein be 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 4th day of August, 2016

\s \_\_\_\_\_  
Kelly Cochrane  
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 4, 2016.

Fond Du Lac County Department of Social Services  
Division of Health Care Access and Accountability