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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOP/143189

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 16, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on September 17, 2012, at Waukesha, Wisconsin.

The issue for determination is whether Waukesha Health and Human Services correctly determined that Petitioner was over issued FoodShare benefits in the amount of \$164.00 for August 2012.

NOTE: The record was held open to give the agency an opportunity to submit an Employer Verification of Earnings Form and a printout showing the unemployment insurance benefits received by Petitioner. The documents have been marked collectively as Exhibit 5.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Aina Bromberek

Waukesha County Health and Human Services  
500 Riverview Avenue  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On August 3, 2012, the agency sent Petitioner a notice of negative action, indicating that she was over issued FoodShare benefits in the amount of \$164.00 for August 2012, due to a failure to report the receipt of unemployment insurance benefits. (Exhibit 3, pg. 2)
3. Also on August 3, 2012, the agency sent Petitioner a notice of negative action indicating that as of September 1, 2012, her FoodShare benefits would be reduced from \$200 per month to \$36 per month. (Exhibit 2, pgs. 2)
4. The agency actually disbursed \$26 in FoodShare benefits to Petitioner for September 2012, because it withheld \$10 to satisfy the alleged overpayment of FoodShare benefits that occurred in August 2012. (Exhibit 2, pg. 8)
5. Petitioner filed a request for fair hearing that was received by the Division on August 17, 2012. (Exhibit 1)
6. Petitioner's assistance group size is one. She is 61 years old and as such, is considered elderly for FoodShare purposes. (Petitioner's testimony; FoodShare Wisconsin Handbook)
7. Petitioner pays \$488 per month in rent. (Petitioner's testimony; Exhibit 2, pg. 5)
8. Petitioner received unemployment insurance benefits (UIB) in the amount of \$100.00 per week for one week in June 2012 and for all weeks in July and August 2012. (Petitioner's testimony; Exhibit 5, pgs. 4-5)
9. During the school year, Petitioner works 22.50 per week at a rate of \$9.46 per hour; Petitioner is paid bi-weekly. (Exhibit 5)
10. Petitioner does not work during the summer break. In 2012, summer break began on June 8, 2012; Petitioner received her last pay check of the school year on June 29, 2012. Petitioner received the first pay check of the 2012-2013 school year on September 15, 2012. (Exhibit 5)

**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), emphasis added; see also *FoodShare Wisconsin Handbook*, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In the case at hand, the agency asserts that Petitioner was over-issued FoodShare benefits because she did not report receipt of UIB income and that had she timely reported this income, her FoodShare benefits would have been reduced.

Petitioner did not dispute receiving \$200 in FoodShare benefits in August 2012. However, Petitioner contests the agency's assertion that her receipt of UIB benefits would have affected her FoodShare benefits.

## *REPORTING REQUIREMENTS*

Elderly, Blind, or Disabled (EBD) Food Units are those where all food unit members are elderly, blind, or disabled. If no one in this food unit has earned income, these food units are required to report the following changes within 10 days:

1. Number of people in the home:
  - a. When a person is born or dies
  - b. When someone moves in or out
  
2. Income:
  - a. Unearned: New source- increases of more than \$100 per month in *child* support income; increases of more than \$50 per month in other types of unearned income.
  - b. Earned: Changes in the source of income (a new job must be reported within 10 days from the start of the job, not from when the recipient received the job.
  
3. Change in shelter and utility expense obligations if a move occurs.
  
4. Any change in the legal obligation to pay child support.

Changes must be reported to the *FS* agency within 10 days of the date the change is known to the food unit, except for reporting receipt of a new job. Then the change must be reported within 10 days from when the job starts.

### *FSH §6.1.1.1*

For all other households, the obligation to report changes is governed by FoodShare Wisconsin Handbook (FSH) §6.1.1.2 which states:

“All other food units are only required to report if their total monthly gross income exceeds 130% of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL. As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as ‘Reduced Reporting’ requirements.”  
See also *7 CFR 273.12*.

Petitioner is 61 years old and considered elderly for FoodShare purposes, but she had earned income in June 2012. As such, Petitioner was obligated to follow reporting instructions described in FSH §6.1.1.2. In summary, Petitioner would have been obligated to report the unemployment insurance income she began receiving in June 2012 by July 10, 2012, ONLY if her gross monthly income exceeded 130% of FPL, which for a household of one was \$1180.00. *FSH §8.1.1.1*. This would have affected the benefits which are in dispute for August 2012.

In June, Petitioner’s monthly earned income was \$915.25:

22.50 hours per week x \$9.46 per hour = \$212.85 per week  
 \$212.85 per week x 2 = \$425.70 per bi-weekly pay period.

\$425.70 per bi-weekly pay period x 2.15 average bi-weekly pay periods per month = \$915.25

In June 2012, Petitioner's unearned income was \$100 in UIB income. Thus, her total gross income was \$1015.25.

Because Petitioner's June income did not exceed 130% of FPL/\$1180.00, she did not need to report the addition of UIB income by July 10, 2012. Consequently, Petitioner made no error.

It should be noted that even if Petitioner had reported all the changes in her income, it would not have affected her August 2012 benefits because her income in July 2012 decreased:

Petitioner's allotment for August 2012 should have been calculated as follows per *FSH, at § 4.6*:

\$430 gross income	\$488 rent
-\$147 standard deduction	- \$141.50 (50% of \$283 net income)
-\$0 earned income deduction	
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\$283 net income	\$346.50 shelter/utility deduction
-\$346.00 shelter/utility deduction	
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\$0 net income	

A person with zero net income is eligible for \$200 in benefits. *FSH, §8.1.2*

**CONCLUSIONS OF LAW**

The agency incorrectly determined that Petitioner was over issued FoodShare benefits for August 2012.

**THEREFORE, it is ORDERED**

That the agency rescind the Notice of FoodShare Overissuance mailed to Petitioner on August 3, 2012 and that it refund any FoodShare benefits withheld as a result of the erroneously issued Notice of FoodShare Overissuance. The agency shall take steps to do this within 10 days of this decision.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 3rd day of October, 2012

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Mayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

c: Waukesha County Health and Human Services - email  
Department of Health Services - email



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 3, 2012.

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