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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOP/143451

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 25, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Barron County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 18, 2012, at Barron, Wisconsin.

The issue for determination is whether the county agency correctly the amount of the petitioner's FoodShare overpayment.

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: Candi Gillette

Barron County Department of Human Services  
Courthouse Room 338  
Barron, WI 54812

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Barron County.
2. The county agency seeks to recover \$2,755 in FoodShare provided to the petitioner from April through August 2012 because it believes it incorrectly determined her household's self-employment income.

3. The petitioner's husband has an automobile mechanic business that he started in 2011.
4. When determining the petitioner's FoodShare allotment from April through August 2012, the petitioner's worker determined self-employment income by dividing the amount her husband earned in 2011 from the business by 12. The business operated for six months during that year.
5. The petitioner's husband earns less this year than last year from his business.

### DISCUSSION

Federal regulations require state agencies to "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. The amount of a FoodShare allotment depends upon net income and the number of persons in the household. The county agency contends that the petitioner's household received \$2,755 more FoodShare than it was entitled to from April through August 2012 because it incorrectly determined her husband's self-employment income. He owns an auto mechanic business that he began operating in the second half of 2012. The agency used a self-employment income reporting form to determine self-employment income in 2011. In February 2012, when conducting a six-month review, the agency worker used the couple's 2011 tax return and divided the self-employment income by 12 to get the monthly average. It now states that it should have only divided by six, which is the number of months the business operated in 2011. The petitioner contends that the business income dropped significantly by April 2012, when the overpayment allegedly began.

The *FoodShare Wisconsin Handbook*, § 4.3.3.5.2., provides the following guidance to agencies when they determine self-employment income:

Use IRS tax forms to average income only if:

1. The business was in operation at least 1 full month during the previous tax year,
2. The business has been in operation 6 or more months at the time of the application, and
3. The person does not claim a significant change in circumstances since the previous year.

If all 3 conditions are met, and the tax forms are not complete, ask the client to either complete the appropriate tax form(s) or have the client complete one *SEIRF* for the previous year's circumstances. Completing the form(s) is solely the client's responsibility.

See also 7 C.F.R. §273.11(a)(2).

A *SEIRF* is a self-employment reporting form. The agency worker who appeared at the hearing contends that the agency did not use these because the petitioner did not report a change of income. This might not be entirely true. The petitioner testified that when her matter was up for review last summer she reported the change and was told by the worker handling the matter that she was underpaid rather than overpaid. However, because she had a review in February, the latest review would have been in August, which is at the end of the alleged overpayment period. Regardless, it is impossible to determine exactly what she was told and when because her case, like all cases now, was handled by several workers, and the one who appeared at the hearing had no first-hand and little second-hand knowledge of the case.

Further, even if the petitioner did not report a decline in income from 2011, the agency's error contributed to this failure. She received approximately \$550 a month in FoodShare based on what she reported as her 2011 household income. If the agency had determined that income from six rather than 12 months of income and found her ineligible, she would have had an incentive to request that she be allowed to prepare *SEIRFs*. As it was, the agency found her husband's monthly income to be half of what it actually was in 2011. This reduced figure was consistent with what she believed was his actual income at the time of the review and led to a substantial FoodShare allotment.

Using SEIRFs rather than the 2011 federal tax return allows the agency to have any overpayment more precisely reflect the petitioner's financial circumstances during the period of the alleged overpayment because the overpayment would be based upon her household's actual income. FoodShare benefits are based upon income because of the simple premise that the less money a person has, the less she can devote to food. When determining future benefits, the agency must always make an educated guess about a recipient's income based upon her past and current circumstances. When recovering an overpayment, it generally is no longer necessary to guess at what the recipient earned, assuming the agency can gather sufficient information about her income during the alleged overpayment period. Recovering more than the recipient's financial circumstances would dictate is especially a concern when the agency's error led to the overpayment: the agency should not be able to use a less precise means to recover an overpayment that would allow it to profit from its error. Rather, both the allotment allowed and any resulting overpayment should reflect the financial circumstances the petitioner faced during the period of the alleged overpayment. In order to ensure that this occurs, I will remand this matter to the agency to redetermine what, if any, overpayment she had from April through August 2012 and to base her income on SEIRFs reflecting that period.

### **CONCLUSIONS OF LAW**

1. The petitioner's 2011 federal tax return does not accurately state her income for April through August 2012.
2. There is insufficient evidence to determine what if any overpayment the petitioner had from April through August 2012.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that it redetermine how much, if any, FoodShare that the petitioner was overpaid from April through August 2012. When doing so, it shall use SEIRFs reflecting income from this period to determine the income on which it bases her correct allotment and overpayment. The petitioner shall provide these to the agency within 10 days of the date of this decision and the agency shall issue its decision within 10 days of receiving the SEIRFs. If the petitioner disagrees with the agency's determination, she may file a new appeal.

### **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 Madison,  
Wisconsin, this 3rd day of October, 2012

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Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals

c: Barron County Department of 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.

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