



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOP/143543

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 01, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Department of Health Services' (DHS) PACU – "5173" case in regard to petitioner's FoodShare benefits (FS), a telephonic hearing was held on October 31, 2012, in Walworth County, Wisconsin.

The issue for determination is whether the Department is correctly seeking recovery of \$985 in FoodShare (FS) overpayments to the petitioner during the period of September 1, 2010 through June 30, 2012, due to petitioner's husband was ineligible for FS benefits as a "fleeing felon" but petitioner received FS benefits for a household of two (which included her husband).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Judy Johnson, Departmental specialist  
Wisconsin Department of Health Services  
1325 S. Broadway  
DePere, WI 54415

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. During the entire period of September 1, 2010 through June 30, 2012, petitioner was married to [REDACTED] [REDACTED]. Petitioner continued to be married to [REDACTED] [REDACTED] as of the date of the October 31, 2012 hearing.
3. The petitioner received FoodShare (FS) benefits as the case head for a FS household of two (including her husband) during the period of September 1, 2010 through June 30, 2012.
4. [REDACTED] [REDACTED] has been wanted on a felony warrant as a fleeing felon since February 19, 2010. The felony warrants were based upon [REDACTED] [REDACTED]'s criminal cases in Case [REDACTED] and [REDACTED]. As a fleeing felon, Mr. [REDACTED] was ineligible for FS benefits per FoodShare Handbook, 7.3.1.2 and 7 CFR 273.11(n) and 7 CFR 273.11(e) (6).
5. The Department did not discover until about June, 2012 that [REDACTED] [REDACTED] was a felon fleeing from prosecution (and thus ineligible for FS benefits).
6. The county agency sent an August 20, 2012 Notice of FS Overissuance in Claim # [REDACTED] to the petitioner (and separate notice to her husband) at the correct address of record stating that she received a FS overissuance of \$447.00, during the period of September 1, 2010 to August 31, 2011, due to the client error of failing to timely notify the county that her husband was a fleeing felon and thus ineligible for FS benefits. As a result, petitioner incorrectly received FS benefits for a household of two, when she should have only received FS benefits for a household of one (without including her husband in her FS group).
7. The county agency sent an August 20, 2012 Notice of FS Overissuance in Claim # [REDACTED] to the petitioner (and separate notice to her husband) at the correct address of record stating that she received a FS overissuance of \$538.00, during the period of September 1, 2011 to August 31, 2011, due to the client error of failing to timely notify the county that her husband was a fleeing felon and thus ineligible for FS benefits. As a result, petitioner incorrectly received FS benefits for a household of two, when she should have only received FS benefits for a household of one (without including her husband in her FS group).
8. As of the October 31, 2012 hearing, the remaining FS overpayment amount was a total of \$985.00 (\$447 + \$538).

### DISCUSSION

During the October 31, 2012 hearing, the Departmental representative, Judy Johnson presented a well-documented case to clearly establish that petitioner and her husband had been overpaid FS benefits during the period of September 1, 2010 through June 30, 2012. The basis for the overpayment was petitioner and her husband failed to timely notify the county agency that [REDACTED] [REDACTED] was a fleeing felon, but instead continued to accept FS benefits for a household of two when Mr. [REDACTED] was ineligible for FS benefits. See Finding of Fact # 4 above. The Departmental representative documented how the FS total overpayment of \$985 had been calculated in the FS Overpayment Worksheets attached to the August 20, 2012 FS Overpayment Notices.

During the hearing, despite her outbursts of anger and shouting, petitioner was unable to provide any reliable testimony or evidence to refute the Department's FS overpayment case. The petitioner was unable to specify or document any error in the county's determination or calculation of the remaining FS

overpayment amount to be \$985.00. Petitioner did not contest that she had received FS benefits during the overpayment period in question. The petitioner did not dispute that her husband has been a fleeing felon since February 19, 2010 and that he continued in that status as of the October 31, 2012 hearing date.

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 Wisconsin Handbook, Appendix 7.3.2.2.

The petitioner’s primary argument was she felt that the FS recovery against her was unfair, and contended that the FS overpayment should be solely against her husband as the party who was fleeing criminal prosecution but who was included in her FS group. However, as explained above, the controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: “The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .” 7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, Appendix 22.2.1. In addition, those regulations also 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 . . .

Therefore, the county agency is correctly seeking recovery of the FS overpayment not only from the petitioner’s husband but also from the petitioner, based upon joint and several liability for the household’s FS overpayment. Accordingly, based upon the above, I must conclude that Department is correctly seeking recovery of \$985 in FoodShare (FS) overpayments to the petitioner during the period of September 1, 2010 through June 30, 2012, due to petitioner’s husband was ineligible for FS benefits as a “fleeing felon” but petitioner incorrectly received FS benefits for a household of two (which included her husband).

### **CONCLUSIONS OF LAW**

The Department is correctly seeking recovery of \$985 in FoodShare (FS) overpayments to the petitioner during the period of September 1, 2010 through June 30, 2012, due to petitioner’s husband was ineligible for FS benefits as a “fleeing felon” but petitioner received FS benefits for a household of two (which included her husband).

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

### **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 served and 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, 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 2nd day of November, 2012

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Gary M. Wolkstein  
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 November 2, 2012.

PACU - 5173  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability