



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]

DECISION

FOP/143629

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 04, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Adams County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on November 08, 2012, at Friendship, Wisconsin. The record was held open for 10 days to allow petitioner to submit prior years' tax returns. Those documents were received on November 20, 2012.

The issue for determination is whether the county agency correctly established an overpayment of FoodShare benefits to petitioner.

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: Dana Hendrickson

Adams County Health and Human Services  
108 E North Street  
Friendship, WI 53934-9443

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. The county agency seeks to recover \$36,218.00 in FoodShare benefits provided to the petitioner from August, 2006, through July, 2012, because it asserts that petitioner failed to disclose her household's self-employment income as a dog breeder.
3. The petitioner's husband had an automobile mechanic business that closed in 2011. Petitioner's husband was incarcerated in early 2011.
4. When determining the petitioner's FoodShare allotment from August, 2006, through July, 2012, the respondent attributed the income earned by petitioner in 2011 for each prior year.

### 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 \$36,218.00 more FoodShare than it was entitled to from August, 2006, through July, 2012, because petitioner did not disclose her self-employment income.

Respondent discovered that petitioner has had a website for [REDACTED] [REDACTED] a dog breeding service, since 2007. The matter was referred to O'Brien and Associates. Investigator Greg Thiele found, among other things, that petitioner earned \$18,000 from the dog breeding business in 2011. Respondent testified that the dog breeding business was never reported on petitioner's Six Month Report form (SMRF), nor was petitioner's husband's incarceration. Respondent alleges that petitioner did not submit any tax forms to respondent, until submission of her 2011 taxes.

In response, petitioner claims that she never reported her involvement with [REDACTED] [REDACTED] because she never earned any money from it, at least not until 2010. And she vehemently disagrees with the respondent's contention that she did not turn in her tax forms. In fact, she argues that she provided that information annually, since the family's historical household income was related to her husband's auto repair business. As he was self-employed, she maintains that she had to submit tax forms to prove the family's household income.

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).

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. The petitioner has provided tax information dating back to 2006. While it may not be entirely complete, it does establish somewhat of a baseline of petitioner's household income. In any event, it is a much more appropriate basis for an overpayment determination, than the respondent's current use of \$18,000 annually (based on 2011 reported earnings).

Recovering more than the recipient's financial circumstances would dictate is a concern considering that the petitioner is likely in a difficult financial position; the agency should not be able to use a less precise means to recover an overpayment that would allow it to profit from the 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 re-determine what, if any, overpayment she had from August, 2006, through July, 2012, and to base her income on the tax information submitted on November 20, 2012.

### **CONCLUSIONS OF LAW**

1. The petitioner's 2011 federal tax return does not accurately state her income for the alleged overpayment period of August, 2006, through July, 2012.
2. There is insufficient evidence to determine what if any overpayment the petitioner had from August, 2006, through July, 2012

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that it re-determine how much, if any, FoodShare that the petitioner was overpaid from August, 2006, through July, 2012. When doing so, it shall use petitioner's tax information for the years 2006-2012, reflecting income from this period to determine the income on which it bases her correct allotment and overpayment. The agency shall issue its decision within 10 days following this decision. 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 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 14th day of December, 2012

---

\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



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

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 14, 2012.

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