



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOP/144650

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 19, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services (MES) in regard to FoodShare benefits (FS), a telephonic hearing was held on November 14, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services is correctly seeking a FoodShare (FS) overpayment to the petitioner during the period of March 1, 2012 to June 30, 2012, due to her boyfriend was a “fleeing felon” and thus ineligible for FS benefits.

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: Sharon Thacker, HSPC senior  
Milwaukee County Department of Human Services  
1220 W. Vliet Street  
1st Floor, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who resided with her boyfriend, [REDACTED] in a household of two.
2. The petitioner receives FoodShare (FS) benefits for a FS household of two (petitioner and Mr. [REDACTED]).
3. [REDACTED] was a fleeing felon due to a May 3, 2011 arrest warrant. He was not eligible for FS as a fleeing felon pursuant to the FoodShare Handbook, 3.18.1. See Exhibit 2.
4. During her March, 2012 FS review, the petitioner did not report to Milwaukee Enrollment Services that her boyfriend (who was included in her FS household) was a “fleeing felon.”
5. Milwaukee Enrollment Services (MES) sent a September 24, Notice of FS Overissuance to the petitioner stating that she received a FS overpayment of \$664 during the period of March 1, 2012 to June 30, 2012, due to incorrectly reporting household composition because her boyfriend was a fleeing felon and thus was ineligible for FS. See Exhibit 3. As a result, petitioner was only eligible for FS as a household of one, and not two persons during the overpayment period.

### DISCUSSION

Persons who are fleeing felons and/or probation/parole violators are not eligible to receive FS benefits. A fleeing felon is defined in the FS Handbook as “a person who is *fleeing to avoid prosecution or custody/ confinement* after a felony conviction.” FS Handbook § 3.18.1. A probation and parole violator is defined as “a person who is in violation of conditions of probation or parole imposed by state or federal law.” FSH § 3.18.1.

During the November 14, 2012 hearing testimony and exhibits, the MES representative, Sharon Thacker, presented a well-documented case to establish that petitioner had been overpaid FS benefits during the period of March 1, 2012 to June 30, 2012. The basis for the overpayment was that petitioner’s boyfriend as a fleeing felon was ineligible for FS benefits, and thus petitioner received FS for a group of two, when she was actually only eligible for FS for herself. Ms. Thacker established that Mr. [REDACTED] was ineligible for FS per FoodShare Handbook, sec. 3.18.1. The MES representative documented how the FS total overpayment had been calculated in the FS Overpayment Worksheets attached to the September 24, 2012 FS Overpayment Notice. Petitioner was unable to specify or document any error in MES’ determination or calculation of the remaining FS overpayment amount to be \$664. Petitioner did not contest that his she had received FS benefits during the overpayment period in question.

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 boyfriend, as she alleged that she was not aware that he was a fleeing felon. 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, Milwaukee Enrollment Services is correctly seeking recovery of the FS overpayment not only from the petitioner but also from her boyfriend, based upon joint and several liability for the household's FS overpayment. Accordingly, based upon the above, I conclude that Milwaukee Enrollment Services is correctly seeking a FoodShare (FS) overpayment to the petitioner during the period of March 1, 2012 to June 30, 2012.

### CONCLUSIONS OF LAW

Milwaukee Enrollment Services is correctly seeking a FoodShare (FS) overpayment of \$664 to the petitioner during the period of March 1, 2012 to June 30, 2012, due to her boyfriend was a "fleeing felon," and thus ineligible for FS benefits pursuant to the FoodShare Handbook, 3.18.1.

**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 13th day of December, 2012

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\sGary 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 December 13, 2012.

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