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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOP/143545

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 04, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 12, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency may make an overissuance of FoodShare caused by Petitioner's failure to report self-employment income.

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: Pamela Hazley

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. Petitioner was sent a Notification of FoodShare Overissuance that informed Petitioner that she had been overissued FoodShare benefits in the amount of \$2588.00 during the time period from June 1, 2011 through March 31, 2012. Claim # [REDACTED]
3. The reason alleged for this overissuance was that Petitioner failed to report earned income; specifically, income from self-employment as the owner and operator of an adult family home.
4. Petitioner applied for a license to operate an adult family home in April 2010. That application was approved.
5. Petitioner submitted reviews and six-month report forms for the FoodShare program in June 2010, November 2010, May 2011 and November 2011. On none of these did Petitioner report self-employment.
6. The record is not clear as to how the agency became aware of Petitioner's adult family home, but by February 2012 the agency did know of the business and requested financial information from Petitioner.
7. Ultimately the agency received Petitioner's 2011 Federal income tax forms that indicated that Petitioner had a net profit of \$4113.00. The tax return also reported depreciation expenses of \$840. The agency added that depreciation to net profits bringing Petitioner's total profit to \$4953.00 for 2011 or \$412.75 per month.
8. There is no indication that the agency ever requested any financial information from Petitioner concerning the business for 2012.
9. The agency added the net profit from the adult family home of \$412.75 per month from the 2011 tax returns to unearned income for the household in the amount of \$690.38 per month for each of the months of the overpayment alleged here. The \$690.38 per month had been reported properly and used in determining the FoodShare allotment for Petitioner's household.
10. At all times relevant here Petitioner's household size was three.

### DISCUSSION

Federal law generally requires that all FS overpayments be recovered, regardless of whether the recipient or the county is at fault. Those regulations 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 . . .  
*7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH) § 7.3.1.1.*

In an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. The Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

There is no dispute as to the facts related above. Rather, the resolution of this case revolves around whether Petitioner had to report the self-employment and the income. The relevant policy during the time period applicable here states:

**Policy History For 6.1.2 Six Month Reporting Requirement  
 Release 09-02**

Food units certified for 12 months, and subject to reduced change reporting requirements, are required to submit a six-month report form (SMRF) in the sixth month of the

certification period. Using the SMRF, these food units are required to report and verify the current gross earned and unearned income received by all household members. Self-employment income that has already been averaged does not need to be re-verified, unless a significant change is reported. Other changes that must be reported on the interim report are:

1. Household composition (persons that have moved in or out, including newborns)
2. New address and resulting changes in shelter and utility expenses
3. New or ended sources of earned income ( [4.3.2](#)) (including self-employment) ( [4.3.3](#))
4. Change in legal obligation to pay child support ( [4.6.5](#))

Any changes reported must also be verified. An adult household member must sign the interim report form.

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*FSH, §6.1.2; release 09-02; effective 06/26/09.*

The reduced reporting requirement referred to above applies to changes and, with respect to income, requires that changes in income that put household income over 130% of the Federal Poverty level be reported. See *FSH, §6.1.1.2; also see 7 C.F.R. § 273.12(a)(vii).* ) These are changes that occur between required reports and reviews. A person is required to report new or ending sources of income, including self-employment, on six month report forms. With the report the agency then has the self-employed person complete self-employment income report forms (SEIRFs) that allow a prospective estimate of earnings to be made. *FSH, §4.3.3.5.4.*

Petitioner did not testify at the hearing but apparently did not report the income because the business had 'not taken off'. See case comments of 2/20/12, Ex # 12. Nonetheless, she was making a profit. I am sustaining the overpayment. Petitioner was required to report her self-employment and did not do so.

### **CONCLUSIONS OF LAW**

That Petitioner was overissued FoodShare as alleged for claim # [REDACTED] because she did not report self-employment income.

**THEREFORE, it is**

**ORDERED**

That this appeal is 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 Milwaukee,  
Wisconsin, this 10th day of January, 2013

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\sDavid D. Fleming  
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 January 10, 2013.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability