



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOP/143707

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 08, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 18, 2012, at West Bend, Wisconsin. A decision was issued by DHA on November 6, 2012. On November 27, 2012, the Petitioner filed a request for a rehearing. That request was granted on December 6, 2012. A hearing was held on January 10, 2013 and continued on February 21, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overpayment of FS benefits in the amount of \$2,612 for the period of November 1, 2011 – June 30, 2012 from the 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: No Appearance

Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. On July 11, 2011, the agency received an online ACCESS application from [REDACTED] [REDACTED] requesting FS benefits. On the application [REDACTED] reported herself and the Petitioner as part of the household. She reported that she and the Petitioner purchase and prepare meals together. [REDACTED] [REDACTED] reported no source of earned or unearned income for the household.
3. On July 25, 2011, the agency issued a Notice of Decision to [REDACTED] approving FS benefits of \$367/month effective July 11, 2011 for a household size of two. The notice informed [REDACTED] of her obligation to report household income over \$1,579/month by the 10th of the next month.
4. On November 28, 2011, the agency received a completed Six Month Report Form (SMRF) from [REDACTED]. The agency processed the SMRF on December 7, 2011. [REDACTED] again reported a household size of two, including herself and the Petitioner. She reported that she and the Petitioner purchase and prepare meals together. The agency found a new hire match for the Petitioner showing he was employed with [REDACTED].
5. On January 16, 2012, the agency issued a Notice of Decision to [REDACTED] approving \$313/month in FS benefits effective January 1, 2012 for a household size of two.
6. On May 23, 2012, the agency received an online ACCESS renewal from [REDACTED] which was processed on June 7, 2012. [REDACTED] reported on the renewal form that the household size was two, including herself and the Petitioner. She reported that she and the Petitioner purchase and prepare meals together. During the FS interview, the Petitioner reported that his hours with [REDACTED] [REDACTED] increased.
7. On June 27, 2012, the agency reviewed the case and found a potential overpayment for failure to report income over \$1,579/month.
8. On July 18, 2012, the agency determined that an overpayment exists for the period of November 1, 2011 – May 30, 2012 as the household was required to report income over \$1,579/month by the 10th of the next month. The agency determined the household exceeded \$1,579/month starting in August, 2011. The household was required to report this by September 10, 2011. Proper reporting would have affected benefits beginning November, 2011.
9. On July 19, 2012, the agency issued a notice of overissuance and overissuance worksheets to the Petitioner and to [REDACTED].
10. On July 23, 2012, the Petitioner contacted the agency via phone to report that his child support income was being incorrectly calculated and that it would impact the overpayment amount. On August 15, 2012, the agency reviewed the child support information and determined it was incorrectly calculated. The Petitioner's child support obligation is \$137.50/week or \$591.25/month. This did not impact the amount of the overpayment.
11. On August 31, 2012, the agency contacted the Petitioner who stated that he never purchased and prepared meals with [REDACTED].

### DISCUSSION

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. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

Federal FS regulations state as follows, in the part relevant here, as to liability for FS overpayments:

- (4) The following are responsible for paying a claim:
- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred;

7 C.F.R. § 273.18(a)(4).

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

In the initial hearing, the agency produced the several applications of ██████████ which clearly indicate that she reported she and the Petitioner lived together and purchased and prepared meals together. The Notices of Decision issued as a result of the applications clearly indicate that the benefits were being issued based on FS group size of two and that the Petitioner was included as part of that group. The agency also produced case comments regarding this case.

At the initial hearing, the Petitioner testified that he and ██████████ are family friends and roommates. He believes that it was a misunderstanding on ██████████'s part of including him on the application in the FS group. He testified that he and ██████████ do not purchase and prepare meals together. He testified that he rarely eats at home and that ██████████ used the FS benefits for herself only. The Petitioner also testified that he believed he was required to provide information about his wages because he lived in the house. Petitioner testified that he informed the agency of this living situation a year ago. I noted in the original decision that there is no evidence of this in the case comments. I note that the reason the Petitioner's rehearing request was granted was to allow him time to review and respond to the agency's case comments.

At the re-hearing, the Petitioner re-iterated the same arguments asserted at the initial hearing. There was no new information presented. The Petitioner again asserts that ██████████ did not understand the application process. ██████████ did not appear to present any testimony at the hearing to confirm this. There was no information in the case comments regarding a previous conversation regarding the living situation. I note again that the case comments refer to numerous contacts by the Petitioner made with the agency regarding the FS benefits.

The FS regulations and the greater weight of the evidence, including the case comments and the agency notices, require me to conclude that the agency has met its burden of showing that there was an overpayment of FS benefits and the Petitioner is liable, with ██████████, for that overpayment. The Petitioner did not present sufficient evidence to rebut the agency's case.

### CONCLUSIONS OF LAW

The agency properly seeks to recover an overpayment of \$2,612 for the period of November 1, 2011 – June 30, 2012 from the Petitioner.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby 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 5th day of March, 2013

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\sDebra Bursinger  
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 March 5, 2013.

Washington County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability