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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOP/143821

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 13, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on October 11, 2012. A Decision was issued on November 7, 2012. Following the grant of respondent's rehearing request based upon submission of new evidence, a telephonic rehearing was conducted February 11, 2013.

The issue for determination is whether the respondent correctly determined that petitioner was overpaid FS during the period of September 1, 2011 and July, 1, 2012, in the amount of \$4,099.00.

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: Bobby Annen

Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. Respondent seeks to recover \$4,099.00 in FoodShare benefits provided to the petitioner from September 1, 2011, to July, 1, 2012, as a result of petitioner’s alleged error in under-reporting her income.
3. The petitioner is employed at the Central Wisconsin Center, operated by the State of Wisconsin, Department of Health Services. During the period of September 1, 2011 and July, 1, 2012, she was employed part time, and worked 20 hours per week. Petitioner’s base pay rate was 15.469. Exhibit C.
4. Petitioner is enrolled in college, and participates in a tuition reimbursement benefit offered by her employer. The reimbursement program is based upon petitioner’s income and grade point average. Petitioner’s employer used to provide a separate check, but now the reimbursements are included in her paycheck.
5. Petitioner has regularly provided income and employment verification via correspondence from her employer. Exhibit A. Petitioner has not provided pay stubs as verifications; respondent testified that letters from petitioner’s employer are acceptable forms of verification.

**DISCUSSION**

FoodShare benefits are determined by net income and the size of the household. When respondent determined the petitioner’s FS allotment, it did not count the education reimbursement provided by petitioner’s employer. When her employer’s educational benefits were added to petitioner’s pay checks, the increased income was noted by respondent via a State Wage match. Respondent argues that, since this educational reimbursement is taxed and is paid as part of petitioner’s wages, it constitutes income and should be counted. Based upon that premise, respondent concludes that it provided her household with \$4,099.00 more in FS benefits from September 1, 2011, to July, 1, 2012, than it was entitled to. It now seeks to recover this overpayment.

The petitioner objects because she reported her income correctly. Respondent concedes that the letters received from petitioner’s employer were acceptable forms of verification.

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. However, these regulations first require that an overpayment actually occurred. Despite new evidence presented by the respondent at the rehearing, I conclude that the respondent has erred in establishing an overpayment.

At the rehearing on this matter, the respondent argued that newly uncovered evidence, which was presented in support of its rehearing request and marked as Exhibit E, supports its contention that the income received by petitioner did not constitute reimbursement of educational expenses, and therefore, was excluded from the following FS Handbook section dictates:

- 4.3.4.3 Disregarded Unearned Income
  - Disregard the following income:
  - ...
  - Employment Training and Education:
    - ...
    - 2. Disregard educational expense reimbursements.

*Wisconsin FS Handbook*, §4.3.4.3. Respondent’s newly submitted correspondence from petitioner’s employer, Wisconsin Department of Health Services, indicated, in part:

As a recipient, you will be provided 100% tuition reimbursement upon successful completion of courses. You will receive your salary based on 100% FTE while attending LPN school as a full time student and working a 50% schedule. ...

Exhibit E, p. 2.

The respondent also submitted two pages entitled “Central Wisconsin Center for the Developmentally Disabled LPN Training Agreement for the LPN Stipend.” See, Exhibit E, pp. 3 -4. That document states, in pertinent part:

The Employer agrees to:

1. Pay 100% of student’s tuition costs to the accredited LPN program upon successful completion.
  2. CWC will continue to compensate you as a 100% FTE RCT; with a minimum of working 50% RCT duties and 50% performing functions related to attending LPN school.
- ...

Exhibit E, p. 3. This agreement was signed by petitioner. When questioned as to the origin of the document, respondent testified that the agreement was received from an employee of the Office of Inspector General. Respondent could not verify that it constituted the entire document, and the employee who provided the document was not called to testify at hearing.

Petitioner responded that she believed that there was more to the document, including language indicating that the 100% pay for 50% work was intended to reimburse her for the costs of school fees and textbooks. The record was held open to allow petitioner to submit further information regarding the agreement with her employer.

On February 15, 2013, petitioner’s employer submitted a copy of the agreement which is, in fact, only two pages. However, she also included an informative cover letter which states, in part:

I am enclosing a copy of the agreement Ms. [REDACTED] and I signed. The agreement indicates the expectations for both the student and the employee. Ms. [REDACTED] worked at CWC 50% while attending school and received 50% of her salary *related to school functions*.

Exhibit 3 (emphasis added). The respondent contends that the additional income received by petitioner is in addition to the tuition reimbursement paid by her employer. This appears to be, by and large, correct. The issue, then, is whether the additional income also constitutes educational reimbursement. Based upon the understanding of petitioner’s employer, as expressed above, I must conclude that petitioner has demonstrated by a preponderance of the evidence that it does.

I find that the petitioner has successfully rebutted the respondent’s contention that the additional income should not be disregarded per *Wisconsin FS Handbook*, §4.3.4.3. Petitioner’s employer clearly considers the additional income to constitute payment “related to school functions.” The additional information provided by the respondent has not established that petitioner was overpaid FS benefits as alleged. As such, this matter shall again be remanded to the respondent to rescind the overpayment.

### CONCLUSIONS OF LAW

1. Petitioner's educational expense reimbursements are deemed disregarded unearned income.
2. Respondent failed to disregard petitioner's educational expense reimbursements, and thereby incorrectly assessed an FS overpayment to petitioner.

**THEREFORE, it is**

**ORDERED**

That this matter be remanded to the respondent to rescind the overpayment assessed per Claim No. [REDACTED], in the amount of \$4,099.99.<sup>1</sup> This action shall be completed within 10 days following issuance of the Decision.

### **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.

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<sup>1</sup> Respondent noted at hearing that a \$2.00 mathematical error was discovered in the calculation of the overpayment. As such, the actual amount of the alleged overpayment is \$4,097.00. In light of the Order to rescind the overpayment claim, this decision does not reach the calculation of the overpayment.

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 20th day of February, 2013

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\sPeter McCombs  
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 February 20, 2013.

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