



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOP/145345

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 20, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Manitowoc County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on December 18, 2012, at Manitowoc, Wisconsin. During that hearing, the county agency was almost entirely unprepared to present its FS overpayment case against the petitioner. At the request of the parties, the record was held open for 30 days for additional evidence to be submitted to DHA. Both parties submitted additional hearsay evidence to DHA which is received into the hearing record.

The issue for determination is whether the county agency met its burden of proof to establish with reliable evidence that is correctly seeking FoodShare (FS) overpayments during the period of March 17, 2010 to November 30, 2011, due to petitioner failing to report accurate household member and her boyfriend's earned 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: Ann Luckow, ESS  
Manitowoc County Department of Human Services  
3733 Dewey Street  
Manitowoc, WI 54221-1177

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County. She resides with her two children. The petitioner's boyfriend, [REDACTED] is the father of one of petitioner's two children. The petitioner also resides with her dad.
2. During the December 18, 2012 hearing, the county agency failed to be able to provide the dates of the alleged FS overpayment period or the reason for the overpayment.
3. During the December 18, 2012 hearing, the county agency was almost entirely unprepared to present testimony or evidence to establish a prima facie case regarding petitioner's alleged FS overpayment case.
4. After the hearing, the county agency sent two FS overpayment notices to the Division of Hearings and Appeals (DHA) alleging that petitioner received \$6,331 in FS overpayments during the period of March 17, 2010 to November 30, 2011. See Preliminary Recitals.
5. The alleged basis for the overpayment was that [REDACTED] resided with the petitioner during the overpayment period, but petitioner allegedly failed to report Mr. [REDACTED] in her home and his income in determining petitioner's eligibility and FS benefits.
6. There was contradictory evidence in the hearing record as to whether or not Mr. [REDACTED] resided with the petitioner during the March 17, 2010 to November 30, 2011 FS overpayment period.
7. The county agency's O'Brien investigator, Amanda Spencer, in pertinent part of her report stated: "The information gathered and the interviews conducted indicate that [REDACTED] has been residing at 1210 A. Hamilton Street with [REDACTED] since at least February 2012 . . ."
8. The county agency's evidence was almost entirely hearsay evidence and lacked reliability.
9. The county agency was unable to establish with reliable, non-hearsay evidence that Mr. [REDACTED] resided with petitioner during the alleged FS overpayment period and thus his income needed to be counted in calculating the petitioner's FS eligibility and benefits during that period.

### 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), emphasis added; see also FoodShare Wisconsin Handbook, Appendix 7.3.1.9.

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

In this case, as indicated in the above Findings of Fact, the county representative did not have any reliable, non-hearsay evidence to establish that Mr. [REDACTED] resided in the petitioners' residence during the FS overpayment period of March 17, 2010 through November 30, 2011. In fact, the county agency's own investigator, Amanda Spencer, in pertinent part of her report stated: "The information gathered and the interviews conducted indicate that [REDACTED] has been residing at 1210 A. Hamilton Street with [REDACTED] since at least February 2012 (which is **after** the overpayment period of March 17, 2010 through November 30, 2011. The county offered hearsay evidence that another neighbor thought

petitioner might have lived with Mr. [REDACTED] for the past few years, but that neighbor did not testify and no affidavit from that neighbor was even offered. Furthermore, during the hearing, the county agency's case was unprepared and was lacking even with the dates of the alleged overpayment period or the alleged reason for the overpayment. Such lack of preparation very much undermined the county's credibility in pursuing this FS overpayment action against the petitioner. As a result, the county agency did not establish with sufficient reliable evidence that it is correctly seeking recovery of FS overpayments to the petitioner during the period of March 17, 2010 through November 30, 2011.

The petitioner testified that Mr. [REDACTED] did not reside with her and their child in common until 2012, and that he resided in Milwaukee. Petitioner also testified that she resided with her father, and not with Mr. [REDACTED] prior to 2012. While the record was held open, petitioner submitted some hearsay evidence that she resided at a different address than Mr. [REDACTED]. The county representative present at the hearing was unable to provide any reliable evidence to refute that testimony. Furthermore, the county agency was only able to provide hearsay evidence to support the allegation that petitioner failed to timely report Mr. [REDACTED] in her residence. Based upon this hearing record, I conclude that the agency has not established by the preponderance of the evidence that the county agency met its burden of proof to establish that it is correctly seeking recovery of FS overpayments to the petitioner during the period of March 17, 2010 through November 30, 2011. Accordingly, based upon the above, I conclude that the county agency's FS overpayment determinations must be rescinded for the period of March 17, 2010 through November 30, 2011.

### **CONCLUSIONS OF LAW**

The county agency has failed to meet its burden of proof to establish by a preponderance of the evidence that the petitioner was overissued FoodShare benefits during the period of March 17, 2010 through November 30, 2011.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the county agency with instructions to rescind and reverse FS overpayment claims against the petitioner for the total FS overpayment period of period of March 17, 2010 through November 30, 2011, within 10 days of the date of this 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.

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 15th day of February, 2013

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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 February 15, 2013.

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