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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOP/145349

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 16, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 18, 2012, at Milwaukee, Wisconsin. The hearing record was held open for seven days with the parties' consent to allow the Department to submit documentation regarding the petitioner's alleged probation violator status, as inadequate documentation of this status was presented at the time of hearing.

The issue for determination is whether the petitioner was overpaid \$8,152 in FS benefits from February 2007 through May 31, 2012, due to being in violation of conditions of her state misdemeanor probation (failure to pay supervision fee).

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: Mary Hartung, Income Maintenance Spec. -Advanced  
Milwaukee County Department of Human Services  
1220 W. Vliet Street  
1st Floor, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)

Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner received FS as a household of five persons from February 2007 through May, 2012.
3. The petitioner was convicted of misdemeanor battery on October 20, 1999. The judge ordered a term of 18 months of probation, with an imposed and stayed sentence of six months. The petitioner was never ordered to serve the stayed jail sentence. See, *CCAP*, case no. [REDACTED].
4. The petitioner fulfilled all of the conditions of her 1999 probation by mid-2001, with one exception: she failed to pay all of her supervision fee. See, Wis. Admin. Code § DOC 328.047. The fee was set at \$180, and the petitioner had paid only \$90 as of mid-2001. She then failed to pay the balance of the supervision fee until June, 2012. The petitioner did not abscond during her probationary period.
5. The petitioner was “officially closed out” on July 8, 2012, by the Wisconsin Department of Corrections.
6. On November 28, 2012, the Department of Health Services sent a letter to the petitioner advising that she had been overpaid an unspecified amount of FS for the 8/15/2002 through June 7, 2012 period, due to her status as a probation/parole violator. The letter also correctly identifies the applicable federal rule and state policy. No calculation worksheet or appeal rights information was included. Exhibit 1A.

### DISCUSSION

The Department argues that the petitioner was overpaid her share of her household’s FS allotments from February 2007 through May 31, 2012. The arithmetic of the Department’s calculation is not in dispute. The Department’s overpayment theory is that the petitioner was in violation of the terms of her probation throughout this period, and therefore was not eligible for the FS that she received.

The federal rule that declares probation violators to be ineligible for FS is as follows:

**§ 273.11 Action on households with special circumstances.**

... (n) *Fleeing felons and probation or parole violators.* **Individuals** who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor) or **who are violating a condition of probation or parole under a Federal or State law shall not be considered eligible** household members. The income and resources of the ineligible member shall be handled in accordance with (c)(1) of this section.

...

*[emphasis added]*

7 C.F.R. § 271.11(n). See in accord, *FoodShare Wisconsin Handbook (FSWH)*, § 3.18.1(2/3/12), online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> .

For such a violator, the federal rule seems to direct the Department to find the person ineligible and exclude him/her from the household size determination (while still including his/her income):

...

(c) *Treatment of income and resources of certain nonhousehold members.* During the period of time that a household member cannot participate for the reasons addressed in this section, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

(1) *Intentional Program violation, felony drug conviction, or fleeing felon disqualifications, and workfare or work requirement sanctions.* The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of a disqualification for an intentional Program violation, a felony drug conviction, their fleeing felon status, noncompliance with a work requirement of § 273.7, or imposition of a sanction while they were participating in a household disqualified because of failure to comply with workfare requirements shall be determined as follows:

(i) *Income, resources, and deductible expenses.* The income and resources of the ineligible household member(s) shall continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, child support, and excess shelter deductions shall continue to apply to the remaining household members.

(ii) *Eligibility and benefit level.* The ineligible member shall not be included when determining the household's size for the purposes of:

(A) Assigning a benefit level to the household;

...

*Id.* (c).

However, before any claim can be collected, the Department is required to issue an appropriate notice:

**§ 273.18 Claims against households.**

..

(e) *Initiating collection action and managing claims* —(1) *Applicability.* State agencies must begin collection action on all claims unless the conditions under paragraph (e)(2) of this section apply.

(2) *Pre-establishment cost effectiveness determination.* A State agency may opt not to establish and subsequently collect an overpayment that is not cost effective. ...

(3) *Notification of claim.* (i) Each State agency must develop and mail or otherwise deliver to the household written notification to begin collection action on any claim.

(ii) The claim will be considered established for tracking purposes as of the date of the initial demand letter or written notification.

(iii) If the claim or the amount of the claim was not established at a fair hearing, the State agency must provide the household with a one-time notice of adverse action. The notice of adverse action may either be sent separately or as part of the demand letter.

(iv) <b><i>The initial demand letter or notice of adverse action must include language stating :</i></b>
(A) <b><i>The amount of the claim .</i></b>
(B) The intent to collect from all adults in the household when the overpayment occurred.
(C) <b><i>The type</i></b> (IPV, IHE, AE or similar language) and reason for the claim.
(D) <b><i>The time period associated with the claim .</i></b>
(E) <b><i>How the claim was calculated .</i></b>
(F) The phone number to call for more information about the claim.
(G) That, if the claim is not paid, it will be sent to other collection agencies, who will use various collection methods to collect the claim.
(H) The opportunity to inspect and copy records related to the claim.
(I) Unless the amount of the claim was established at a fair hearing, <b><i>the opportunity for a fair hearing on the decision related to the claim.</i></b> The household will have 90 days to request a fair hearing.
(J) That, if not paid, the claim will be referred to the Federal government for federal collection action.
(K) That the household can make a written agreement to repay the amount of the claim prior to it being referred for Federal collection action.
(L) That, if the claim becomes delinquent, the household may be subject to additional processing charges.
(M) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.
(N) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction.
(O) If allotment reduction is to be imposed, a due date or time frame to either repay or make arrangements to repay the claim in the event that the household stops receiving benefits.
(P) If allotment reduction is to be imposed, the percentage to be used and the effective date.

(v) The due date or time frame for repayment must be not later than 30 days after the date of the initial written notification or demand letter.

[emphasis added]

*Id.*, § 273.18(e)(3).

The Department’s November 28, 2012 overpayment letter to the petitioner fails to include several of the elements required by federal law: the amount of the claim, the type of claim ( *e.g.*, inadvertent household error), the claim period (the letter declares the probation period, not the claim period), how the claim was calculated, and appeal rights information. Collection on the claim cannot begin until an adequate

overpayment notice is issued. This Administrative Law Judge reviewed the CARES Correspondence History, and found no notice issued to the petitioner that satisfied the federal requirement.

This Decision does not bar the Department from re-creating these claims and issuing an adequate notice to the petitioner in a future attempt at collection. However, before the Department does so, I would encourage the Department to consider the following language from state code regarding the length of a term of probation:

**DOC 328.10 Extension of probation.**

(1) GENERAL. Extension is the only means to continue the duration of control by the department over clients on probation beyond the expiration of their commitment term. *Only the court that committed a client may grant an extension of the commitment term.*

(2) GROUNDS FOR EXTENSION. Extension of a client's probation is governed by s. 973.09 (3) (a), Stats.

(3) MANDATORY NOTICE TO COURT. An agent shall notify the committing court and client of the status of the client's failure to comply with an order for restitution at least 90 days prior to the expiration of the client's probation term.

(4) AGENT'S RECOMMENDATION. An agent may recommend that a court grant an extension of the commitment term or that financial obligations be modified. If the court or district attorney requests information regarding a client's possible extension, the agent shall provide relevant information.

(5) CRITERIA FOR RECOMMENDATION AND APPROVAL. An agent shall recommend extension if the agent or supervisor believes that further supervision under an extension is necessary to achieve the goals and objectives of supervision under this chapter.

(6) HEARING. If the department requests extension of a client's probation, the client shall be so notified and informed of the right to a court hearing.

...

**History:** Cr. Register, December, 1981, No. 312, eff. 1-1-82; am. (4) (intro.), r. (4) (a) to (i), Register, April, 1986, No. 364, eff. 5-1-86.

*[emphasis added]*

Wis. Admin. Code § DOC 328.10. Per CCAP, the commitment term was 18 months. CCAP does not reflect an extension of the petitioner's probation. I do not pretend to be an expert in corrections -related law. However, to me, this record is not at all clear in establishing that the petitioner was still on probation during the overpayment period. The code remedies for a probationer who did not pay her supervision fee do not appear to include extension of the probation period without a court order. See, § DOC 328.048.

**CONCLUSIONS OF LAW**

1. The Department cannot commence the requested FS overpayment recovery against the petitioner at this time, due to inadequate notification of the FS overpayment claim.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the Department with instructions to cease collections efforts on FS overpayment claims for the February 2007 through May 31, 2012 period 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 16th day of January, 2013

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\sNancy J. Gagnon  
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 16, 2013.

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