



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/145645

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 30, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on May 01, 2013, at Green Bay, Wisconsin.

The issue for determination is whether the Department established that petitioner is liable for a \$22,561 FS overissuance.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Judy Steffens  
Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner resided with [REDACTED] [REDACTED] during all times pertinent to this appeal.

3. In DHA Case No. FOP/137113, Administrative Law Judge Gary Wolkstein made the following findings of fact:

- 1) Petitioner (CARES # [REDACTED]) is a resident of Brown County who resides with her five children at [REDACTED]. The petitioner's boyfriend is [REDACTED] V. [REDACTED]. The petitioner has one daughter, DL, who is not the child of [REDACTED].
- 2) [REDACTED] V. [REDACTED] (age 39) is the father of four of petitioner's children (WS, RS, US, and SS).
- 3) The petitioner has been receiving FoodShare (FS) benefits in Wisconsin since December, 2003. The petitioner received FS benefits during the overpayment period of December 1, 2006 through July, 2011. See Exhibit 10.
- 4) During September, 2006, petitioner inaccurately reported to the county agency that [REDACTED] was no longer residing with her and should be removed from her household. Mr. [REDACTED] was removed from petitioner's FS household as of December, 2006.
- 5) The petitioner works as a supervisor during night shift (11 p.m. to 7 a.m.) at [REDACTED]. She earned about \$12.95 per hour and worked 40 hours per week since July 29, 2009. See Exhibit 14.
- 6) The petitioner worked at [REDACTED] from June 17, 2005 to July 21, 2008. See Exhibit 14 which documents her wages during that period. Petitioner also worked at [REDACTED] from July 18, 2008 to August 14, 2009 which is also documented in Exhibit 14.
- 7) Mr. [REDACTED] was employed during the day shift by [REDACTED] ([REDACTED]) as of December, 2006. He generally earned about \$13.25 per hour for 40 hours per week. The employer confirmed his wages in Exhibit 5. He reported to his employer that his address is [REDACTED].
- 8) Mr. [REDACTED] became eligible for employer funded health insurance benefits for himself and his four children as of March 1, 2008. See Exhibit 5. Neither petitioner nor Mr. [REDACTED] reported to the county agency that Mr. [REDACTED] was eligible for employer health insurance which would have made him ineligible for MA.
- 9) The petitioner and [REDACTED] registered multiple vehicles with the Department of Motor Vehicles at the same joint address of [REDACTED]. See Exhibit 7.
- 10) Mr. [REDACTED]'s credit report from TransUnion, his DWD records, and the child support agency documents indicate his address to be 502 E. Allouez Ave. See Exhibits 8, 9 and 4.
- 11) Mr. [REDACTED] admitted in a written statement to Brown County Sheriff's Sargent [REDACTED] that "he and [REDACTED] had been together for 17 years after meeting in Texas." See Exhibits 1 and 2.
- 12) The petitioner failed to report during her twice yearly reviews or six month report forms (SMRFs) for FS and childcare benefits (CC) (and once yearly Medicaid report) that Mr. [REDACTED] moved back into her home after December, 2006. See Exhibits 11 - 13.
- 13) The FS net income limits changed for a FS household of seven during periods of petitioner's extended FS overpayment period: a) December, 2006 - \$2,517; b) October, 2007 - increased to \$2,591; c) October, 2008 - increased to \$2,667; and d) October, 2009 - increased to \$2,773.
- 14) The petitioner's FS household of seven was above the FS net income limits during the overpayment period of December, 2006 through July, 2011 with the exceptions of the following months in which petitioner was entitled to less FS than she received (December, 2006, April, 2007, October and November, 2007, and April, 2009. See FS Overpayment Summary.

- 15) The county agency sent five (5) October 11, 2011 FoodShare (FS) overpayment notices to the petitioner for the entire period of December 1, 2006 through July, 2011 in the total amount of \$22,561, due to petitioner's failure to timely report that Rolanda [REDACTED] was residing in her household, and his earned income resulting in household net income over the net income limit for most months of the overpayment period (or eligibility for reduced FS benefits as set forth in Finding of Fact #14 above).
4. In the above entitled case, the ALJ affirmed the Department determination of the FoodShare overissuance and dismissed Ms. [REDACTED]'s appeal.
  5. On October 22, 2012, the Department issued a Notice of FS Overissuance in the amount of \$22,561 to petitioner on the basis that he was an adult in the food unit at the time of the overissuance.
  6. Petitioner filed a timely appeal.

### DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2)(emphasis added).

Those regulations also 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. The FS Handbook similarly provides that an adult is a person who is 18 years old or older and a member of the food unit at the time the overpayment occurred is liable for repayment of any overissued FS benefits.

This case is one controlled by issue preclusion. The question of whether an overissuance occurred has already been actually litigated in the appeal of Ms. [REDACTED]. Issue preclusion does not require "identity of parties." Notably though, Mr. [REDACTED]'s testimony was made part of the record in that matter. The ALJ's findings of fact and affirmance of the overissuance are made part of this record and I make findings consistent with those. The only question then is whether petitioner is liable for the overissuance in addition to Ms. [REDACTED].

As cited above, the rules of the program make clear than any adults in the household or food unit are liable for the overissuance. Mr. [REDACTED] was an adult in the household and part of the food unit under the previous findings of fact. He is jointly and severally liable for the overpayment just as Ms. [REDACTED] was previously found.

I also note that the evidence presented by the Department was persuasive and outweighed the testimony of the petitioner who presented no corroborating evidence to support his story. If not for the doctrine of issue preclusion, I would still have affirmed this action based on the weight of the evidence presented at hearing.

### CONCLUSIONS OF LAW

The Department did not err in finding an overissuance of FS in the amount of \$22,561.

**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 Madison,  
Wisconsin, this 10th day of May, 2013

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\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 10, 2013.

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