



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOP/145959

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 13, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 9, 2013, by telephone.

The issue for determination is whether the petitioner was overpaid FS for the August through December 2011 period.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Tom Miller, Supr.

Western Region for Econ. Assistance (consortium)  
La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. The [REDACTED] [REDACTED] FS household received FS as a household of three persons ([REDACTED], the petitioner, and their child-in-common) from at least July through December, 2011. [REDACTED] under-reported her earned income at case review in July 2011, causing the household to receive excessive amounts of FS thereafter. The allotments for August through October 2011 were \$405 monthly, the November and December 2011 allotments were \$367 monthly.
3. On September 28, 2011, the petitioner and [REDACTED] had a disagreement, which resulted in issuance of a temporary restraining order against the petitioner, vis-à-vis [REDACTED]. The petitioner ceased residing with her on that date. Exhibit 2, CCAP report.
4. On October 11, 2011, [REDACTED] finally reported the petitioner as being out of her household. The agency reduced the household size to two persons effective November 1, 2011, and issued monthly allotments of \$367 in November and December, 2011, for just [REDACTED] and the child.
5. On October 22, 2012, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that the [REDACTED] household had been overpaid \$936 in FS for the 8/1/11 – 12/31/11 period (claim # [REDACTED]). The overpayment was due to client error.

### DISCUSSION

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

#### **273.18 Claims against households .**

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) ***Benefits that are overpaid*** or
- (ii) Benefits that are trafficked. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

**(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:***

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount* – (1) *Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment

...

(e) *Initiating collection actions and managing claims.*

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

[emphasis added]

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 - .2 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>). The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected.

The petitioner does not deny that [REDACTED] may have under-reported her income to the agency in July 2011. However, he argues that he should not be responsible for the portion of the overpayment that occurred in October through December 2011, because he was no longer a member of her FS household in those months.

Clearly, the petitioner has no liability for the November and December 2011 overpayment. The FS rule says that liability extends to a “person who was an adult member of the household when the overpayment occurred.” The petitioner was not a member of the [REDACTED] FS household when the November and December overpayments occurred.

The agency apparently argues that the petitioner was a member of the FS household in October, even if he was not living there, because [REDACTED] did not report him out until the October allotment had been issued. However, the FS rule defines a household as “a group of individuals who *live together* and customarily purchase food and prepare meals together for home consumption.” 7 C.F.R. § 273.1(a)(3). For purposes of determining overpayment liability, the petitioner was not living with [REDACTED] at any time in October 2011, so he was not a member of her FS household in October 2011, so he is not liable for FS paid out for October 2011. Obviously, [REDACTED] remains liable for the entire October 2011 FS amount.

Based on the worksheet supplied by the Department at hearing, the above conclusion should reduce the petitioner’s shared liability with [REDACTED] from \$936 to \$480.

### CONCLUSIONS OF LAW

1. The petitioner was overpaid \$480 FS from August – September 2011, due to client error.
2. The county agency incorrectly sought recovery from the petitioner of the portion of the overpayment for October through December, 2011. The other adult in the household remains liable for the entire overpayment.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the Department with instructions to reduce the amount of the petitioner’s overpayment liability on claim # [REDACTED] by deleting the overpayment amounts attributable to the October through December 2011 allotment payments. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 29th 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 29, 2013.

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