



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/147349

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 15, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 13, 2013, at Milwaukee, Wisconsin. The record was held open for 10 days at request of petitioner so that petitioner could submit additional documents. She did submit copies of employer verification documents.

The issue for determination is whether the Department erred in its determination of a FoodShare ("FS") overissuance in the amount of \$3,191 for the period from 4/1/12 to 12/31/12 (claim No. [REDACTED]).

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: Katherine May  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received FS during the period of the alleged overissuance for a household of three (4/1/12 to 12/31/12).
3. During that time, the agency budgeted \$1,059 of household income for the months of April – June, and \$1,497.88 for the months of July – December.
4. During that time, the household income was actually between \$2,468 and even exceeded \$4,100 in August.
5. As part of its investigation, the Department obtained verification from the employer of both petitioner and her husband (see exhibit #3). The verifications were dated and signed by the employer on 12/22/12 and indicated that petitioner's husband earned \$14.80 per hour at 35.5 hours per week on average (\$525.40/week), that petitioner earned \$9.00 per hour at an average of 12.1 hours per week (\$108.90/week). At 4.3 weeks per month this is approximately \$2,727 per month.
6. During each month of the overpayment period from 4/1/12 to 12/31/12 the household was not eligible for any FS. During the pertinent time, the household received \$3,191 in FS.
7. On 1/7/13 the Department issued a notice of FS overissuance indicating an overissuance of \$3,191 from 4/1/12 to 12/31/12 (claim No. [REDACTED]).
8. Petitioner filed a timely request for hearing.

## DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). 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(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

An FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook, App. 8.1.1.1. 130% of poverty was \$2,008 for a household of three.

The Department's case is premised upon the state wage match record which is wage information provided to the state by employers. When the state received this income information from the petitioner's and her husband's employer, [REDACTED] it noted that the reported wages exceeded the budgeted income for the group. The Department then requested verification which was provided by employer verification forms signed by [REDACTED].

The Department argues that the state wage match record and the information provided by the employer shows that the household income was so high as to make the family ineligible for any FS allotment per FSH 8.1.2. It follows, that the entire sum of FS issued during this time should be recovered.

At hearing, petitioner could not explain why the state wage record would indicate such a big number exceeding the FS budgeted income. Petitioner, represented by her husband at hearing, argued that the state wage match is simply wrong “if you guys are saying that I grossed \$7,000 in a 3-month period of time...that’s way off.” But, petitioner’s husband made reference during the hearing to the 1/31/12 employer verification (see exhibit #3) on which the employer reported a \$14.80 hourly wage and regular weekly hours of 30-38. At 35 hours per week, with 4.3 weeks in a month, this comes out to just under \$6,700. Following the hearing, petitioner submitted a record from the employer showing an income for her husband from April through December of approximately \$23,000 – which is approximately \$2500 per month. This amount even exceeds \$7,000 per quarter. Given this, I do not find the argument persuasive – indeed, the evidence provided by petitioner only confirms that the Department is right. It seems to me that petitioner and her husband simply did not realize the numbers add up to as much as they do. The data, after review, do not seem to be in dispute after all. The numbers on the state wage record are corroborated by the employer forms from January 2012 and December 2012 and the employer’s own printout. All of these sources indicate an income of nearly double what was budgeted.

### **CONCLUSIONS OF LAW**

The Department did not err in determining the \$3,191 overissuance.

**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 11th day of April,  
2013

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\sJohn P. Tedesco  
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 April 11, 2013.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability