



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/147754

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 28, 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 April 3, 2013, at Milwaukee, Wisconsin.

The issues for determination are (1) whether the petitioner's appeal is timely with respect to an April 2012 overpayment determination, (2) whether this appeal is barred by the legal doctrine of claim preclusion, and (3) whether the petitioner was overpaid FS as alleged below.

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, HSPC Sr., with Belinda Bridges  
Milwaukee Enrollment Services  
1220 W Vliet St  
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 two persons from March 1, 2011 through February 29, 2012. Throughout this period, the petitioner received Social Security income of \$885

monthly (2011) or \$917 monthly (2012) for herself. Her income was budgeted in calculating the FS that were issued during the period. FS benefits exceeding \$3,813 were issued to the petitioner's household for the March 2011 – February 2012 period.

3. The Department failed to include VA pension income received by the petitioner's husband, ██████████ ██████████, during the March 2011 through February 2012 period. When the Department realized its error (April 23, 2012), it determined that the petitioner had been overpaid \$3,813 for this period. On April 23, 2012, a *Notification of FS Overissuance* and worksheet (claim ██████████ 0) was issued to the petitioner, advising that she had been overpaid \$3,813 for this period, due to agency error in budgeting income.
4. The petitioner filed a fair hearing request to challenge the overpayment. At the May 2012 hearing, she stressed that the overpayment was not her fault. A decision was issued in June, 2012, by an Administrative Law Judge other than the undersigned, which was partially favorable to the petitioner. Decision FOP/140903 (Wis. Div. of Hearings & Appeals June 5, 2012)(DHS). Specifically, the Administrative Law Judge noted the federal rule that limits recovery in "agency error" cases to 12 months from the overpayment discovery date. He therefore ordered the agency to drop March and April 2011 (\$606) from the overpayment amount, leaving a balance of \$3,207 to be recovered.
5. The petitioner did not file a circuit appeal to challenge the Administrative Law Judge's decision in #140903.

### DISCUSSION

Per federal rule, if an overpayment was caused by agency error, the Department may not go back more than 12 months from the discovery date for collection. 7 C.F.R. § 273.18(b). In the prior hearing decision, the Administrative Law Judge correctly advised the agency to drop the March and April 2011 FS allotments from the amount to be recovered. He did not make any other adjustment to the overpayment amount. Indeed, he made this observation in the Discussion portion of his decision:

The petitioner was unable to establish any error in the calculation of her FS overpayment. She admitted both her income stream, and her husbands, had existed and were correctly added to the budget. She could point to no other computation error as to her households' income, expenses or deductions.

At the April 3, 2013, hearing before me, the petitioner again complained that the overpayment was not her fault, and added a new wrinkle: she asserts that her husband had moved out, to 3850 N. 59<sup>th</sup> Street, prior to May 2011, so he and his income should not have been counted in the overpayment computation.

I will not be considering the petitioner's new argument for two reasons, either of which is alone sufficient to justify dismissing her appeal. First, the petitioner's February 28, 2013 appeal is not timely to contest an overpayment notice from April 2012. The petitioner had 90 days from the April 2012 notice to file whatever appeal she was going to file. 7 C.F.R. § 273.15.

Second, the correctness of the overpayment was already ruled on by the prior Administrative Law Judge in his June 2012 decision. The doctrine of claim preclusion prevents me from re-doing his work by hashing over the same fact pattern and issues. If the petitioner raised the "absent husband" argument before the other judge, he clearly did not buy it. If she did not raise the absent husband argument in 2012, she is foreclosed from raising it now. She should have brought it up at the May 2012 hearing.

**CONCLUSIONS OF LAW**

1. The petitioner's February 2013 hearing request is untimely for purposes of challenging an overpayment notice issued in April 2012.

**THEREFORE, it is**

**ORDERED**

That 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 9th day of April, 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 April 9, 2013.

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