



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/148303

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 27, 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 May 8, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$1,786 in FS for the February 28, 2012 through December 31, 2012, period.

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: N. Howse, IM Spec. - Advanced  
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 applied for FS online on February 28, 2012, and received FS as a household of one person from February 28, 2012 through at least December 31, 2012. His FS allotments were as follows: February (prorated) - \$13, March - \$200, April - \$200, May - \$200, June - \$200, July -

\$200, August - \$200, September - \$200, October - \$200, November - \$200, and December - \$200. These issued amounts total \$2,013.

3. On March 26, 2013, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that he had been overpaid \$1,786 in FS for the 2/28/12 – 12/31/12 period (claim #4900375334). Exhibit 2. The overpayment was due to agency error.
4. At application, the petitioner indicated that he would not be working in March, but did not indicate that he would not be working thereafter. However, he did return to work in March 2012, which generated earnings. The agency incorrectly budgeted no earnings in the subsequent months. When the petitioner’s actual income is budgeted for the months of February through December, 2012, the unfortunate result was that the petitioner was not financially eligible for any FS during February through October, 2012. He was eligible for a \$12 allotment for November, and a \$161 allotment for December 2012.

**DISCUSSION**

I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

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..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (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.

## II. THE PETITIONER WAS OVERPAID FS FOR THE 2/28/12 – 12/31/12 PERIOD.

The petitioner asserted that he was not issued \$200 per month in FS from March through December 2012. I have reviewed the Department's FS issuance records, and he was issued \$200 monthly from March through December 2012. His allotment dropped to \$37 in January 2013, and then \$16 monthly for March through May 2013. See, Exhibit 3, *FS Issuance History-Disbursement*.

The amount of the petitioner's income is not in dispute. Rather, the petitioner explained that he had provided all requested information to the agency, and that he did nothing wrong. However, as noted above, the agency must collect the overpaid benefits, even if the overpayment was caused by an innocent misunderstanding or mistake. This mandatory recovery is required under federal law, which means that a state official, such as myself and the Department, must comply with that requirement.

### CONCLUSIONS OF LAW

1. The petitioner was overpaid FS from February through December, 2012, due to agency error.
2. The agency is correctly pursuing recovery of that overpayment, pursuant to federal law.

**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 10th day of May, 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 May 10, 2013.

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