



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/148367

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Marathon County Department of Social Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on April 23, 2013.

The issue for determination is whether it was correct to establish the following claim against petitioner for an overpayment of FS: Claim Number [REDACTED] for the time period April 20, 2012 to July 31, 2012 in the total amount of \$2,248.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Maikou Yang, ESS

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

OTHER PERSON PRESENT:

[REDACTED] [REDACTED], petitioner's husband

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. The County established the following claim against petitioner for an overpayment of FS: Claim Number [REDACTED] for the time period April 20, 2012 to July 31, 2012 in the total amount of \$2,248.00.
3. The FS overpayment in *Findings of Fact* #2, above, resulted from agency error when the County, pursuant to the incorrect state form, incorrectly failed to account for depreciation from petitioner's partnership business when calculating petitioner's FS.

DISCUSSION

All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2011); See also, *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.1 & 7.3.2.1. Therefore, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault.

The error that caused the overpayment in this case was made the County and the state -- not by petitioner. It was not petitioner's fault. Nevertheless, this resulted in an overpayment. As noted above, all FS overpayments, regardless of fault, must be collected. Therefore, petitioner may be made to repay the above overpayment even though it was not her fault. Petitioner testified that she received a letter stating she was eligible for FS and the amount and never would have accepted the FS if she knew she would have to repay it. She testified that she and her husband cannot afford to pay back the overpayment. Petitioner's testimony was sincere and understandable. However, the law, as outlined above, controls the result in this matter.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is liable for the FS overpayment detailed in *Findings of Fact* #2, above, even though it was not her fault.

NOW, THEREFORE, it is

ORDERED

that the petition for review herein be and the same is hereby 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 30th day of April, 2013

\sSean P. Maloney
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 30, 2013.

Marathon County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability