



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/148642

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 11, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Burnett County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on May 23, 2013, at Siren, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare that occurred because of the agency's error.

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: Karla Brunberg

Burnett County Department of Social Services  
7410 County Road K, #280  
Siren, WI 54872

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Burnett County.
2. The petitioner's monthly earned income from December 2012 through March 2013 was \$752.50. The county agency based his FoodShare allotment on half of this amount, \$376.25, because it incorrectly assumed that he was paid biweekly rather than weekly.

3. The agency's error caused the petitioner to receive \$543 more in FoodShare benefits than he was entitled to from December 2012 through March 2013.

### **DISCUSSION**

The petitioner is an ongoing FoodShare recipient. From December 2012 through March 2013, the county agency used only half of his actual earned income when determining his FoodShare benefits because it incorrectly assumed he was paid biweekly instead of weekly. This error caused him to receive \$543 more in FoodShare benefits than he was entitled to during this period. He does not challenge the agency's calculations but believes it is unfair to recover an overpayment that occurred because of its error after he correctly reported his income.

I understand his argument, but federal regulations require state agencies to "establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive." 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. He clearly received more FoodShare than he was entitled to. As a result he must repay this overpayment even though it did not occur because of his fault.

### **CONCLUSIONS OF LAW**

The county agency correctly seeks to recover an overpayment of FoodShare that occurred because of the agency's error.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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 23rd day of May, 2013

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\sMichael D. O'Brien  
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 23, 2013.

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