



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/148750

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 16, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regards to the sufficiency of FoodShare benefits (FS), a hearing was held on May 22, 2013, at Milwaukee, Wisconsin. At the request of the agency, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the county agency is correctly recouping FS overpaid to [REDACTED] in the past from the petitioner's ongoing FS allotment because [REDACTED] is in her present household member.

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: Darryl Caper, HSPC  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is the casehead of a current FS group, and adult [REDACTED] [REDACTED] is a member of her household.
2. [REDACTED] [REDACTED] previously had been a separate FS household. On or about April 21, 2010, his separate FS household case was closed and he was added to the petitioner's FS household.

3. On May 4, 2010, the petitioner completed an ACCESS online renewal application confirming and reporting that [REDACTED] [REDACTED] lived in her household.
4. On May 11, 2010, the county agency determined that [REDACTED] [REDACTED] had been overpaid in the past as a separate household, and it issued a Notice of FS Overissuance and Worksheets to [REDACTED] [REDACTED] informing him of this determination; and that he had been overpaid \$1,400 of FS from November 12, 2009 – May 31, 2010, due to a client error in failing to report a residence change.
5. [REDACTED] [REDACTED] has never appealed the overpayment determination, FS Claim # [REDACTED], since May 11, 2010.
6. On or about June 18, 2010, the agency issued a Notice to the petitioner informing her for the first time that her FS household's benefits would decrease from \$796 to \$717 due to the recoupment of a past overpayment, i.e., Mr. [REDACTED]'s overpayment of record. See, Exhibit #1, attached Notice of Decision dated June 18, 2010.
7. Beginning in September, 2012, the agency started recouping Mr. [REDACTED]'s overpayments from the petitioner's FS household's monthly allotments, recovering \$588 through May 16, 2013.
8. During the period of time described in Finding of Fact #6, [REDACTED] [REDACTED] has been an adult resident of the petitioner's household.
9. On or about February 26, 2013, the petitioner telephoned the agency to request information on the balance due on overpayments on her account, because she believed she had been paying by recoupment for years and thought the recoupment processed each month against her FS allotment should end.
10. On or about April 16, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals asserting for the first time that [REDACTED] [REDACTED]'s overpayment of record (FS Claim # [REDACTED]) should not be recoverable from her household's FS allotment even though [REDACTED] is a currently a household member.

### DISCUSSION

First, the petitioner's appeal is untimely as a matter of law. The recoupment of the [REDACTED] overpayment began via notice of negative action issued to the petitioner on June 18, 2010. She did not appeal. Subsequently recoupment was effectuated for eight consecutive months beginning with the September, 2012, benefit issued on August 16, 2012. Still she did not appeal. Finally, she filed an appeal contesting the propriety of the recoupment from her group on April 16, 2012.

Appeals concerning negative actions taken against a FS household, like the recoupment of past due FS overpayment debts against the household or any of its members, must be filed within 90 days of the effective date of the negative action. Wis. Admin. Code §HA 3.05(a); 7 C.F.R. §273.15(g). Here, the recoupment was effective, at a minimum, with the September, 2012, benefit month. That means that the appeal was filed 228 days after the effective date of the recoupment action. Her appeal is therefore untimely as it pertains to the recoupment.

In addition, even had it been timely, the Department's written policy provides as follows:

All adult or emancipated minor food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household.

*FoodShare Wisconsin Handbook*, §7.3.1.2.

This policy is derived from the federal FS regulations, which provide essentially the same liability. 7 C.F.R. § 273.18(a); 7 U.S.C. 2022(a)(2); and see, FoodShare Wisconsin Handbook, App. 7.3.1.2.

Had I reached the merits of the instant appeal, I would have concluded in any event that the recovery against Mr. [REDACTED] for his past overpayment may be maintained against the FS household to which he now belongs, the petitioner's household.

Accordingly, the instant appeal must be dismissed.

**CONCLUSIONS OF LAW**

- 1) The petition for review is untimely as a matter of law, having been filed 228 days after the effective date of the recoupment action against the petitioner's household.
- 2) Even assuming arguendo in the alternative that the appeal was timely, in the alternative the agency correctly sought recovery of the [REDACTED] overpayment debt from the FS household in which [REDACTED] is now an adult member, the petitioner's FS household.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be, and the same hereby 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 7th day of June, 2013

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\sKenneth D. Duren, Assistant Administrator  
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 June 7, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability