



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/148923

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 22, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Ashland County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on May 22, 2013, at Ashland, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged overpayment of FoodShare because she failed to report changes in her income.

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: Beulah Garcia

Ashland County Department of Human Services  
630 Sanborn Avenue  
Ashland, WI 54806

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Ashland County.
2. The county agency notified the petitioner on February 22, 2013, that she was overpaid \$1,232 in FoodShare from April 1, 2012, through January 31, 2013. The Northern Consortium later

determined that the overpayment period ran from June 2012 through January 2013 and the overpayment was \$826.

3. The petitioner lives alone.
4. The county agency assumed that the petitioner earned \$1,091.32 per month throughout the period in question. This is less than 130% of the federal poverty level. *FoodShare Wisconsin Handbook*, § 8.1.1.
5. The petitioner's actual gross earned income was as follows:
 

a. June 2012:	\$1,537.06
b. July 2012:	\$1,943.92
c. August 2012:	\$2,099.80
d. September 2012:	\$1,983.51
e. October 2012:	\$2,472.03
f. November 2012:	\$1,724.54
g. December 2012:	\$1,625.33
h. January 2013:	\$1,127.69
6. The petitioner pays \$525 a month for her rent.
7. The petitioner's net income after subtracting the standard, earned income, and shelter deductions in the months when her income was less than 200% of the federal poverty level is as follow:
 

a. June 2012:	\$654.97
b. November 2012:	\$682.56
c. December 2012:	\$759.90
d. January 2013:	\$284.16
8. The petitioner received \$122 in FoodShare from July through September 2012 and received \$125 from October 2012 through January 2013.
9. The petitioner generally was paid on the 10<sup>th</sup> and 25<sup>th</sup> day of every month or the last weekday before then.

### DISCUSSION

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. The amount of a FoodShare allotment depends upon income and the number of persons in the household. The county agency now contends that the petitioner received \$826 more FoodShare than she was entitled to from June 2012 through January 2013 because she did not report various an increase in income she received for her work as a hair stylist.

Agencies are instructed when determining an overpayment to “[o]nly use the income and expenses reported or required to be reported for each month of the adjustment period.” *FoodShare Wisconsin Handbook*, § 7.3.2.1. Recipients must report any change of income that increases their gross income from below 130% of the federal poverty level to above that amount. *FoodShare Wisconsin Handbook*, § 6.1.1.2. ;7 CFR § 273.12. Changes that reduce benefits generally do not go into effect until the agency

has had adequate time to process a negative notice. *FoodShare Wisconsin Handbook*, § 6.1.3.6.; 7 CFR 273.12(c)(2)(i).

When determining earned income, the agency must count “income only for the month in which it is received.” *FoodShare Wisconsin Handbook*, § 4.3.2. This is based on the simple premise that the less money a person has at any particular time, the less she can spend on food. When determining future benefits, the agency must always make an educated guess about a recipient’s income based upon his past and current circumstances. When recovering an overpayment, it generally is no longer necessary to guess at what the recipient earned—assuming the agency can gather sufficient information about her income during the alleged overpayment period.

Except for January 2013, the petitioner submitted only one paystub a month to the county agency. That paystub was generally for a paycheck issued on the 10<sup>th</sup> of the month. In January 2013, she also submitted a paystub showing she had been paid on the 25<sup>th</sup> of the month. It appears that she was paid twice a month because the paystub for the check issued on the 10<sup>th</sup> of the month indicated it covered money earned for work from the 16<sup>th</sup> to the end of the month. If she did get paid on the 25<sup>th</sup> as well as the 10<sup>th</sup>, she was supposed to report any change raising her income to over 130% of federal poverty level around the 4<sup>th</sup> or 5<sup>th</sup> day of the next month, and the change would go into effect the month after that. For most months, the agency determined her gross income by subtracting the year-to-date figure of the paystub for the check received on the 10<sup>th</sup> of the previous month from the year-to-date figure of the paystub for the check received on the 10<sup>th</sup> of the current month. Thus, for example, her August income was determined by subtracting the amount on her July 10, 2012, paycheck from her August 10, 2012, paycheck. It could not simply add the two paychecks she received each month together because it only had one paystub for each month except January 2013. In addition, even the petitioner had provided both paystubs for every month, adding the two may not have been accurate because various adjustments were made to each pay period for tips, advances, and sales—these were among the most confusing paystubs I have seen. If the agency had received two paychecks a month, it could have more accurately determined her monthly pay by subtracting the second paycheck of the previous month from the second of the current month. In January 2013, it used her year-to-date earnings for 2013 taken from the second paystub to determine that month’s income. (It could not subtract the previous month’s year-to-date figure because January was the start of a new year.) Based upon the information it had, I find that it used a reasonable method to determine her income.

One hundred thirty percent of the federal poverty level has been \$1,211 since October 2012 and was \$1,180 before that. When the agency originally determined her gross income, it assumed it was \$1,081 per month. The agency presented evidence that her income exceeded this amount in April 2012. Her paystub shows that she received \$2,048.92 on April 10, 2012. This amount is confusing it indicates that she received an advance that month. Nevertheless, it is spendable money in her pocket, and because it exceeds \$1,180, there is no little doubt that her total income that month was even higher, meaning she should have reported it. The agency began the overpayment period in June, which accounts for the time that she should have reported the increase in income, the agency would have notified her of a decrease in benefits, and the day of the month that the benefits were issued.

The petitioner should have been ineligible any month her gross income exceeded 200% of the federal poverty level. *FoodShare Wisconsin Handbook*, § 4.2.1.1. For a one-person household, the size of the petitioner’s, 200% of the federal poverty level has been \$1,862 per month since October 2012 and was \$1,816 before then. *FoodShare Wisconsin Handbook*, § 8.1.1. Gross household income includes all income from any source unless FoodShare regulations specifically exclude it. 7 CFR § 273.9(b). Nothing in the federal regulations excludes any of the petitioner’s household income. The petitioner’s income exceeded the gross income limit from July through October 2012. She received \$122 in FoodShare from July through September 2012 and has been receiving \$125 since then. This means that she received \$491

in FoodShare, none of which she was entitled to, during the months her gross income exceeded the program's limit. (The petitioner's paystubs are in *Exhibit 3*.)

The petitioner was eligible for some benefits during the remaining months of the alleged overpayment, but this amount is less than she received. Her monthly allotment depends upon her net income. Net income is determined after subtracting those deductions—and only those deductions—found in 7 CFR § 273.9(d) from gross income. The petitioner is entitled to the standard deduction allowed for households with up to three members. This deduction has been \$149 per month since October 2012 and was \$257 per month before that. *FoodShare Wisconsin Handbook*, §§ 4.6.2 and 8.1.3; 7 CFR § 273.9(d)(1). She is also entitled to a deduction equal to 20% of earned income; the agency allowed her this deduction. 7 CFR § 273.9(d)(2).

The final deduction she is entitled to is a shelter deduction available to those whose shelter costs, including a standard utility allowance set by law, exceed 50% of the net income remaining after subtracting the other deductions. *FoodShare Wisconsin Handbook*, § 4.6.7; 7 C.F.R. §273.9(d)(6)(ii). The shelter deduction currently cannot exceed \$469. (The maximum was \$459 before October 2012.) *FoodShare Wisconsin Handbook*, § 8.1.3. The agency shows all of the calculations that went into determining this and the other deductions in *Exhibit 4*. I have reviewed those calculations, and they are accurate. When subtracting the various deductions she is entitled to, her net income was as follows during the months her gross income did not exceed 200% of the federal poverty level:

a. June 2012:	\$654.97
b. November 2012:	\$682.56
c. December 2012:	\$759.90
d. January 2013:	\$284.16

The correct FoodShare allotments for a one-person household with this net income were \$16 in June, November, and December 2012 and \$114 in January 2013. *FoodShare Wisconsin Handbook*, § 8.1.2. Her actual allotments were \$122 in June 2012 and \$125 in the other three months. This means that she was overpaid \$106 in June 2012, \$109 in November and December 2012, and \$11 in January 2013. Together, these amounts are \$826, the amount the agency correctly concludes she was overpaid.

Although the agency's current calculations are correct, I will remand this because these figures are lower than those provided to the petitioner in the overpayment notice, and it is unclear whether they have been corrected in the Department's computer database.

### **CONCLUSIONS OF LAW**

The petitioner must repay the \$826 in FoodShare benefits that she received but was not entitled to from June 2012 through January 2013.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it make any correction to the petitioner's record necessary to indicate that she received an \$826 overpayment of FoodShare from June 2012 through January 2013. In addition, within 10 days of the date of this decision, it shall ensure that her record indicates that she received no overpayment of FoodShare in April or May 2012. Nothing in this order prevents the Department from taking all legal steps to the recover the \$826 overpayment discussed in this decision.

**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 11th day of June, 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 June 11, 2013.

Ashland County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability