



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/149237

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 06, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the respondent Rock County Department of Social Services in regard to FoodShare (FS) benefits, a telephone hearing was scheduled for June 18, 2013. Following petitioner's subsequent requests to reschedule later proceedings, a telephone hearing was ultimately held on August 12, 2013, at Janesville, Wisconsin.

The issue for determination is whether it was correct to establish alleged overpayments of FS benefits for the time period of September 1, 2012 to December 31, 2012, in the total amount of \$208.00.

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: No Appearance

Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.

2. On May 1, 2013, respondent notified petitioner that it had determined a FS overpayment to petitioner in the amount of \$208.00. Claim No. [REDACTED] was founded by the respondent due to petitioner's alleged failure to report earned income.
3. Petitioner timely appealed the overpayment on May 6, 2013.

### **DISCUSSION**

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, §7.3.1.2.

Respondent failed to appear at the August 12, 2013, hearing in this matter, even though it was given proper notice. Documentary evidence was provided by the respondent prior to hearing, but as the respondent did not appear, none of the documents could be verified by respondent's representative, nor vetted by the petitioner. There is no verified evidence in the record of this matter to support the respondent's presumed allegation that petitioner failed to accurately report earned income. There is no evidence that the respondent accurately calculated petitioner's income and/or the amount of the overpayment. Petitioner appeared at the August 12, 2013, hearing and presented credible testimony that she did not fail to report her income as requested by petitioner.

The burden is on the respondent, to show by a preponderance of the credible evidence that the overpayments occurred as alleged and that the amount of the overpayment claimed is accurate. Wis. Admin. Code §HA 3.09(4). The respondent has failed to do this. Consequently, the alleged overpayment cannot be sustained and must be reversed.

### **CONCLUSIONS OF LAW**

The respondent has failed to establish that it correctly determined and/or calculated FS overpayment Claim No. [REDACTED].

NOW, THEREFORE, it is

### **ORDERED**

That this matter be REMANDED to the respondent to cease any collection activity related to Claim No. [REDACTED], and to rescind this overpayment claim as to petitioner. All actions required hereunder shall be completed within 10 days of the date of 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 28th day of August, 2013

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\sPeter McCombs  
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 August 28, 2013.

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