



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

FOP/149385

PRELIMINARY RECITALS

Pursuant to a petition filed May 15, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regards to an overpayment of FoodShare benefits (FS), a telephone hearing was held on June 13, 2013, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 15 days for the submission of additional information.

The issue for determination is whether the petitioner is jointly liable for a FS overissuance of \$5,298 arising in the period of December 22, 2009 – September 30, 2010.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Respondent:

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

By: Pam Hazley

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. During the period of December 22, 2009, through at least September 3, 2010, he resided together with his then wife, [Redacted], and two minor children-in-common.
2. [Redacted] filed an application for FoodShare (FS) via ACCESS online, on December 21, 2009, stating that her household included herself, and three minor children; and making no mention of

██████ despite the fact that he was then living with his family and had done so for many years continuously.

3. On or about February 5, 2010, ██████ again filed via ACCESS online, seeking Child Care benefits and again failing to report that ██████ lived in her residence.
4. On or about August 5, 2010, ██████ attended a periodic re-certification review for FoodShare benefits, and again did not inform the agency that ██████ was living in her residence and sharing meals with his family.
5. On or about September 2 & 3, 2010, ██████ and ██████ had a large fight and the police were called to their residence; resulting in ██████ moving out of the residence permanently on September 3, 2010.
6. On September 13, 2010, the Department's Milwaukee Economic Support Unit (MiES) received an e-mail from a county child support enforcement worker noting that ██████ had reported to the IV-D office that he had been residing with his wife and family for at least the last 10 years. On or about the same date the agency acted to issue a verification request to ██████ seeking a verification of ██████'s residence address and household composition status for ██████'s FS group. This information was due apparently on or about September 23, 2013.
7. On September 22, 2010, the agency issued a Notice to ██████ informing her that her FS would close effective October 31, 2010, because she had not provided the requested verification.
8. On April 25, 2012, the county agency issued a Notice of FoodShare Overissuance and worksheets, to ██████ informing her that the agency had determined that she had been overpaid \$5,298 in FS during the period of December 22, 2009, through September 30, 2010, because she did not report her husband's income to the agency while receiving benefits. See, Exhibit #1, attached.
9. The agency determined ██████'s gross income by dividing his quarterly earnings reported in the SWICA database by three months, to arrive at a monthly average, and then inserting that income into the pre-existing FS budget for ██████'s household as a four person household that included ██████.
10. On April 9, 2013, the county agency issued a Notice of FoodShare Overissuance to the petitioner, ██████, informing him that the agency had determined that he was liable for an overpayment of \$5,298 in FS during the period of December 22, 2009, through September 30, 2010, because the household failed to report his income to the agency while receiving benefits. See, Exhibit #1, attached.
11. On May 15, 2013, ██████ filed an appeal with the Division of Hearings & Appeals contesting the agency's determination that he was liable for an overpayment of \$5,298 for the period of December 22, 2009 – September 30, 2010.
12. ██████ was an adult living with his wife and children in the same residence during at least the period of December 22, 2009 – September 3, 2010.

### DISCUSSION

Federal FS regulations state as follows, in the part relevant here, as to liability for FS overpayments:

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred;

7 C.F.R. § 273.18(a)(4).

Petitioner was an adult member of [REDACTED] [REDACTED]'s household from at least December 22, 2009 – September 3, 2010. He fully admitted that he lived in the home at all times relevant prior to September 3, 2010, with [REDACTED] and their children-in-common. Though the petitioner moved from the household on September 3, 2010, he remained a part of the FS group until October 1, 2010, because by the time his move out was reported to the agency, benefits for September had already been determined and issued.

Rather, the petitioner argues that he was completely unaware that his wife had obtained FoodShare benefits; or that she had applied for such benefits without listing him as a household member. He argues that it is unfair to seek recovery from him for her bad behavior.

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also *FoodShare Wisconsin Handbook*, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, *FoodShare Wisconsin Handbook*, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. *FoodShare Wisconsin Handbook*, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

When a household receives more FS than it was entitled to receive, it must be recovered by the agency. Based on the evidence presented, the agency has provided sufficient information to demonstrate that the petitioner was an adult residing in the FS household at the time it was overpaid. In addition, the agency has presented a copy of the FoodShare notice and worksheets demonstrating the computations of the overpayment at issue here, based upon a FS budget using pro-rata monthly earnings from his substantial income stream. I reviewed those worksheets along with budget screens showing how the agency calculated the monthly FS allotments. I can find no error. Nor has the petitioner pointed to *any* error or provided any proof of different or less income than used by the agency in these computations. Based on those computations, the petitioner is jointly and severally liable for an overpayment of \$5,298 for the period of December 22, 2009 – September 30, 2010.

Finally, the Division’s administrative law judges do not possess the powers of a court of equity. Rather, my power is limited to the four corners of the law. The petitioner was an adult living in a household that received more FS than that to which it was entitled, and the federal law directs that he is jointly and severally liable for this overpayment. There is no relevant exception under law.

### **CONCLUSIONS OF LAW**

That the petitioner was an adult household member of [REDACTED] [REDACTED]'s FS household during the period of December, 2009 – September, 2010, and the agency correctly determined that he is jointly and severally liable for the FS overpayment arising in those months of \$5,298.

**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 16th day of July, 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 July 16, 2013.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability