



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/149914

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 08, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the PACU - 5173 in regard to FoodShare benefits (FS), a hearing was held on July 16, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

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: Megan Ryan

PACU - 5173  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest an allegation that he is liable for a \$2602 FoodShare overissuance to the mother of his child, [REDACTED] (hereinafter – CSB). The overissuance covered the time period from August 2012 through December 2012. He is alleged

to be liable for the overpayment as he is alleged to have been living with her during the time period involved.

3. Petitioner is the owner of, and lives at, the addressed noted for Petitioner in the above caption. He has a child with CSB. Per a March 21, 2012 Milwaukee County Family Court order, Petitioner had primary placement of the child. CSB was living in Mississippi but moved to Wisconsin in the summer of 2012 and applied for FoodShare.
4. CSB's application for FoodShare was filed on August 17, 2012 and notes her address to be in care of Petitioner at the above address. She also submitted a letter to the agency dated August 15, 2012 from Petitioner indicating she would be living at the above address and paying rent of \$500.00 per month.
5. A September 12, 2012 Milwaukee County Circuit Court order vacates child support and indicates that Petitioner and CSB will cooperate on a visitation schedule.
6. Petitioner issued an eviction notice to CSB dated September 15, 2012. CSB then filed an Emergency Assistance (EA) application with the Social Development Commission (SDC) on September 20, 2012 for the Potomac address seeking financial assistance to avoid the eviction. It is not clear that those benefits were issued. CSB's EA application notes that Petitioner is the landlord but places him at the address of his mother on [REDACTED]. There was then a Landlord Payment Acceptance Agreement sent to Petitioner by the SDC at the [REDACTED] address that was signed and returned to the SDC. Part of Exhibit B-13.
7. A September 21, 2012 W-2 application filed by CSB notes the Potomac address.
8. CSB used the Potomac address as her address with her employer.
9. On or about February 4, 2013 CSB provided the agency with a lease for a new residence with a month to month tenancy that commenced on December 1, 2012. CSB's address also changed with her employer to the new address per her January 2013 paycheck stubs.

### DISCUSSION

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.*

Additionally, Federal Regulations provide, in relevant part, as follows:

- (a) **Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .  
*7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH), § 7.3.1.1.*

Finally, in an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

The documentary record provided by the agency is really laid out in the Findings and does establish a prima facie case for the proposition that Petitioner and CSB were residing together. The question becomes whether the testimony of Petitioner overcomes that prima facie case.

Petitioner testified that he offered to let CSB stay with him for a time. He testified that she never moved in but did move some of her belongings into his home. When she did not pay any rent to keep those belongings there he issued the eviction notice. He testified that he has a girlfriend and that he and CSB do not get along. He stated that he was unaware of the Emergency Assistance application that she filed and did not receive any money from the Social Development Commission. He also argues that CSB forged his signature to documents and invites comparison of signatures.

Here there is a stark dichotomy between the documentary record offered by the Department and the testimony offered by Petitioner. In the end I am persuaded by three things – two in the record and one not.

In the record is the eviction notice which states: ‘...giving [CSB] and her three children five day notice to vacate property due to non payment being received for temporarily *living* there at \$500.00 per month.’ Emphasis added. See Exhibit C, page 2. Why would a person use that terminology concerning only the storage of personal property? Further, the EA documents were sent to the landlord (i.e., Petitioner herein) at his mother’s address. How could those have been obtained and returned to the SDC without some involvement of Petitioner? That Petitioner’s mother was collaborating with CSB in this scheme without Petitioner’s involvement is not believable. Finally, not in the record, is corroborating evidence for Petitioner. There was, e.g., no testimony from Petitioner’s girlfriend or Petitioner’s mother. Though he alleges forgery by CSB, handwriting comparison is tricky at best and a pseudoscience at worst and I am not influenced by a comparison of signatures.

I am, however, making one adjustment to the overpayment. CSB had a new residence as of December 2012. There is no proof that Petitioner was living with her in that month. The amount of the FoodShare overissuance for December was \$486.00 thus the claim is to be adjusted downward to \$2116.00 (\$2602-\$486) for Petitioner.

### **CONCLUSIONS OF LAW**

That the evidence offered by the agency is sufficient to demonstrate that Petitioner was overpaid FoodShare benefits as alleged herein but not for the full time period and not in the amount alleged.

**THEREFORE, it is**

**ORDERED**

This matter is remanded to the agency with instructions to take the administrative steps necessary to reduce Petitioner’s liability for the FoodShare overissuance involved here to \$2116.00 by removing the month of December 2012 and \$486.00 from the amount of the overpayment for which Petitioner is liable. This must be done within 10 days of the date of this decision.

That decision has no effect on any overpayment for which CSB is liable.

### **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 Milwaukee,  
Wisconsin, this 5th day of August, 2013

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\sDavid D. Fleming  
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 5, 2013.

PACU - 5173  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability



**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.

PACU - 5173  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability