



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/150053

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 13, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Washburn County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 24, 2013, at Shell Lake, Wisconsin.

The issue for determination is whether the county agency may recover an alleged overpayment of FoodShare.

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:

Washburn County Department of Social Services  
110 W 4th Avenue  
PO Box 250  
Shell Lake, WI 54871

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Washburn County.
2. The petitioner was due to complete a FoodShare review by November 30, 2012. The county agency presented no evidence that she was notified of this.

3. The agency alleges that the petitioner received \$3,156 in FoodShare from December 1, 2012 through May 31, 2013. but never provided any evidence of this.
4. The petitioner's income has not changed since October 2012.

### 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. FoodShare recipients are usually certified for 12 months. To be recertified and continue receiving FoodShare benefits they must complete a review and verify current household information in the last month of the certification period. *FoodShare Wisconsin Handbook*, § 2.2.1. If they do not complete the review by this time, their FoodShare case will close. *Id.*, § 2.2.1.4. Recertification involves several steps, the first of which is that “[n]otification must be sent to the recipient informing him/her that the certification period is ending and an interview (2.1.3) must be conducted if benefits are to continue.” *Id.*, 2.2.1.3.

The county agency contends that the petitioner missed the 12-month review she was supposed to complete by November 30, 2012. It further contends that it then incorrectly continued providing FoodShare to her for the next six months. It seeks to recover the entire \$3,156 in benefits she allegedly received in during this period. The flaw in agency's case is that it did not submit any documentation showing that it completed the first step of the recertification process, which is to notify her of the review. The agency has the burden of proving by the preponderance of the credible evidence that the petitioner was ineligible for FoodShare and received an overpayment. Because it has not sufficiently proved that it notified her of the review, it cannot find her ineligible for failing to complete it. In addition, it failed to provide any documentation that she received \$3,156 more in FoodShare than she was entitled to. The agency does not have to prove the exact amount owed to prevail, but it must provide enough evidence for the Division of Hearings and Appeals to establish that she received some particular overpayment.

I note that it is questionable whether the agency could have recovered this overpayment if it did establish that it had notified the petitioner of the review. 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. 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. At least one decision has found that this means that when determining an overpayment, the agency should base that overpayment on the recipient's actual income during the overpayment period. *See FOP/144490*. Although the petitioner's actual income during this period has not been documented, it does not appear that it is significantly different than it had been during the previous year.

### CONCLUSIONS OF LAW

1. The county agency has not established by the preponderance of the credible evidence that the petitioner was notified that she must complete a FoodShare review.
2. The county agency has not established by the preponderance of the credible evidence the amount of FoodShare the petitioner received from December 2012 through May 2013.
3. The county agency has not established by the preponderance of the credible evidence that the petitioner received an overpayment of FoodShare from December 2012 through May 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 remove from the petitioner's record any finding that she was overpaid FoodShare from December 2012 through May 2013.

**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 30th day of October, 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 October 30, 2013.

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