



[REDACTED] OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/150058

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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 [REDACTED] County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on July 23, 2013, at [REDACTED], Wisconsin. The hearing record was held open for 7 days for a submission from the petitioner (lease); nothing was received.

The issue for determination is whether the petitioner was overpaid FS of \$1,479 from May 2012 through March 2013. Specifically, the question is whether the agency has proved that the petitioner's child AA was out of the petitioner's household during the period.

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: Kristine Jordahl, ESS  
Waupaca County Department of Social Services  
811 Harding Street  
Waupaca, WI 54981-2087

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. The petitioner received FS as a household of five persons (including her son, AA, age 10) prior to and during May 2012. She then received FS as a household of four persons (including AA) from at least June 2012 through March, 2013.
3. On April 17, 2013, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$1,479 in FS for the 5/1/12 – 3/31/13 period (claim # [REDACTED]). Exhibit 1. The overpayment was allegedly due to client error, for failure to report the child AA out of the household during the overpayment period.
4. The petitioner's child AA resided with her 50% of the time from May through December 2012, and from February through March 2013. He lived with the petitioner for less than 50% of the time in January 2013.

## DISCUSSION

### I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

#### **273.18 Claims against households.**

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) ***Benefits that are overpaid*** or
- (ii) Benefits that are trafficked. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

(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:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim ...

(c) *Calculating the claim amount – (1) Claims not*

*related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment

...

(e) *Initiating collection actions and managing claims.*

(1) *Applicability.* State ***agencies must begin collection action on all claims*** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>). The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected.

## II. THE PETITIONER WAS OVERPAID FS ONLY IN THE MONTH OF JANUARY 2013.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's income is in dispute. Rather, the petitioner explained that child AA was living with her for 50 percent of the time during the overpayment period.

There is a court order in place that awards placement and custody of AA jointly to his father and the petitioner. See, Exhibit 2. The parents do not get along, and the petitioner believes that the father supplied the tip to the agency that AA was not living with the petitioner at least 50% of his time.

The petitioner, her mother, and the child AA all testified that the child spent alternating full weeks at the residence of the petitioner, followed by the residence of the father, [REDACTED] A, through mid-December 2012. In mid-December 2012, the petitioner was evicted from her residence at [REDACTED]. In late December 2012, the petitioner lost her job.

Upon eviction, the petitioner moved in with her mother at [REDACTED]. AA spent weekends only with his mother at the [REDACTED] address until approximately February 1, 2013. During that period, he spent Monday-Friday at his father's residence, and continued to attend school in [REDACTED]. On approximately February 1, 2013, AA returned to his "full week on/full week off" schedule with his mother. This conclusion was based on the testimony of the three persons mentioned above.

The agency pursued this 10-month overpayment per the conclusion of an investigation report from a private contractor, [REDACTED]. This report, dated February 24, 2013, is poorly written, and does not meet the agency's burden of proof (preponderance of the evidence). The investigator interviewed two [REDACTED] neighbors who talked about the *current* occupant of the petitioners' old apartment, not the petitioner. A statement was elicited from neighbor [REDACTED] at [REDACTED], whom the petitioner said she has never met. The investigator also telephoned the [REDACTED] landlord, [REDACTED] (spelled "[REDACTED]" elsewhere in the report). The landlord told the investigator that, prior to the December eviction, the petitioner lived at the property with two children "full time, however he was not sure." The investigator did not obtain a copy of the lease, and did not ask the age of the two "full-time" children.

The investigator spoke to neighbor [REDACTED] ([REDACTED]). He stated that the petitioner used to live at the [REDACTED] address "with two children, and one other child, older than the two that lived there, would come over once in a while to visit." There apparently was no questioning of [REDACTED] as to how often he saw or interacted with the petitioner while she lived at [REDACTED] (daily? weekly? monthly?). The investigator herself did not testify.

The report contains zero evidence of AA's residence after December 2012. Nonetheless, the February 24 report blithely concluded that AA was not living with the petitioner from Memorial Day 2012 forward. Noticeably absent from the report is an interview of the petitioner, a check of school residence records, and a statement from AA's father. This is not enough to meet the agency's burden. The petitioner's mother admitted at hearing that AA was in her household less than 50% of the time from late December 2012 through January 2013, so an overpayment was incurred for January 2013 only. (I cannot identify that dollar amount, as the overpayment worksheet exhibit supplied to me cuts off before the each month's overpayment amount is identified).

### CONCLUSIONS OF LAW

1. The petitioner was overpaid FS during January 2013, due to client error.

2. The petitioner was not overpaid FS for May through December 2012, and February through March 2013.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the county agency with instructions to reduce the petitioner's overpayment amount to the January 2013 overpayment amount only, within 10 days of the date of this Decision. In all other respects, the petition 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 1st day of August, 2013

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals





██████████ of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 1, 2013.

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