



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/150732

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 17, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 04, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$1,571 for the period of March 1, 2012 – March 30, 2013.

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: Katherine May  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 16, 2012, the Petitioner submitted an online renewal application for FS benefits. She reported a household size of two. She also reported employment at [REDACTED] starting 10/25/2011 of 37.5 hours/week at \$10/hour.

3. On February 1, 2012, the agency received an employment verification from [REDACTED] verifying Petitioner's employment with regular scheduled hours of 38 – 40/week at \$10/hour.
4. On February 2, 2012, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits of \$139/month effective March 1, 2012. The notice further informed the Petitioner that if her household's total monthly income goes over \$1,594, she was required to report by the 10<sup>th</sup> day of the next month. It informed the Petitioner that failure to report increased income could result in an overpayment.
5. On May 2, 2012, the agency processed the Petitioner's Six Month Report Form (SMRF). No changes were reported by the Petitioner.
6. On October 16, 2012, the Petitioner submitted an online renewal application for FS benefits. She reported a household size of two. She also reported employment at [REDACTED] of 39 hours/week at \$10/hour.
7. On November 12, 2012, the agency received an employment verification from [REDACTED] verifying Petitioner's employment with regular scheduled hours of 40/week at \$10/hour.
8. On November 13, 2012, the agency issued a Notice of Decision informing the Petitioner that she would receive FS benefits of \$124/month effective December 1, 2012.
9. On April 8, 2013, the Petitioner submitted an online renewal application for FS benefits. She reported a household size of four. She reported her employment at [REDACTED] of 37.44 hours/week at \$13/hour.
10. On April 30, 2013, the agency received a state wage match discrepancy alert for the Petitioner's employment at [REDACTED]
11. On June 24, 2013, the agency issued a notice to the Petitioner informing her that she may have been overpaid FS benefits. The notice requested income verification from [REDACTED]
12. On July 1, 2013, the Petitioner provided pay statements to the agency for the period of October 29, 2011 – June 22, 2013. The agency also received an employment verification for the Petitioner from [REDACTED] dated June 10, 2013 stating that the Petitioner is currently employed 40 hours/week at \$13.26/hour but effective immediately, her hours were reduced to 35 hours/week.
13. On July 3, 2013, the agency issued a Notice of FS Overissuance and worksheets to the Petitioner informing her that the agency overissued FS benefits to her in the amount of \$1,325 for the period of May 1, 2012 – March 31, 2013.
14. On August 6, 2013, the agency issued a notice to the Petitioner that the amount of overissuance was adjusted to \$1,571 and the overpayment period was adjusted to March 1, 2012 – March 31, 2013.
15. On August 26, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **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, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

In this case, the agency presented convincing evidence to establish that Petitioner's hourly rate of pay was \$13/hour, not \$10/hour as reported and budgeted by the agency. The Petitioner's pay statements from October, 2011 – March 22, 2013 show an hourly rate of \$13. Beginning March 22, 2013, the Petitioner's hourly rate was \$13.26. The agency produced the Petitioner's online renewal applications showing that she reported \$10/hour during the relevant time period. The agency also produced the budget screens demonstrating that it determined Petitioner's FS allotments based on the reported \$10/hour.

The Petitioner testified that she did not intentionally misrepresent her hourly rate of pay. She stated that she failed to properly update the renewal applications. I note that there is no intent element to an overpayment. The agency has demonstrated that the Petitioner was overissued benefits and it is required to recover the overissuance.

The agency used the Petitioner's actual pay statements to determine the amount of the overissuance. Based on actual gross income, the agency determined the Petitioner's FS allotment should have been \$16/month for the period of March 1, 2012 – March 30, 2013 with the exception of November, 2012 when it determined she was over the income limit and was not eligible for benefits. The agency noted that it revised the time period of the overpayment. Based on the Petitioner's actual income from the pay statements, she should have reported that she went over 133% of the FPL by February 10, 2012. This would have affected her benefits beginning March 1, 2012. Therefore, the overpayment started March 1, 2012.

Based on the evidence, I conclude the agency properly seeks to recover an overpayment of \$1,571 from the Petitioner for the period of March 1, 2012 – March 30, 2013.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover an overpayment of \$1,571 from the Petitioner for the period of March 1, 2012 – March 30, 2013.

**THEREFORE, it is**

**ORDERED**

That the petition be, and 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 Milwaukee,  
Wisconsin, this 14th day of October, 2013

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\sDebra Bursinger  
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 14, 2013.

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