



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/150772

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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 Douglas County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 28, 2013, at Superior, Wisconsin.

The issue for determination is whether the agency has adequately proven that the petitioner has received an overpayment of FoodShare as a result of its error that she must now repay.

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: Tom Ostrander

Douglas County Department of Human Services  
1316 North 14th Street  
Suite 400  
Superior, WI 54880

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Douglas County.
2. The petitioner applied for BadgerCare Plus, FoodShare, and Child Care assistance on January 23, 2013. Because the income she reported apparently exceeded the limit for each of these programs,

the Department's computer would not issue a request for verification. The worker manually indicated that the petitioner earned \$2,000 a month, a dummy amount, so that the verification request would be issued.

3. When determining the petitioner's benefits, the agency inadvertently continued to use the \$2,000 dummy amount it had entered into the system.
4. From January through June 2013, the petitioner received \$1,989 in FoodShare.
5. The county agency seeks to recover all of the FoodShare provided to the petitioner from January through June 2013 because it contends that her income exceeded the program's limit throughout the period.
6. The county agency has provided no proof of the petitioner's income.

### **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 benefits and eligibility depend upon income and the size of the household. Households whose gross income exceeds 200% of the federal poverty level are not considered categorically eligible for benefits. *FoodShare Wisconsin Handbook*, § 4.2.1.1.

The petitioner applied for FoodShare in January 2013. When the agency attempted to send a request to verify her income, the computer program the Department uses to determine eligibility would not do so, apparently because the income the agency used was over the program's limit. Rather than deny benefits at this point, the agency put a lower dummy amount—\$2,000—into the system. Then, when determining her eligibility, it inadvertently used the dummy amount rather than her actual income. The petitioner was found eligible and received \$1,989 in FoodShare from January through June 2013. The agency now contends that her gross income exceeded 200% of the federal poverty level throughout this period and seeks to recover the entire amount.

As indicated earlier, the agency must recover all overpayments regardless of who is at fault. But this requirement does not relieve it of its obligation to prove that the petitioner received an overpayment. The agency submitted no documentation of the overpayment before or during the hearing. I allowed it to submit documentation after the hearing, even though this prevented the petitioner from meaningfully responding. It did document the amount of benefits it provided to her, but even then it failed to provide any evidence such as wage matches or paystubs proving how much she earned. The agency has the burden of proving by the preponderance of the credible evidence that an overpayment occurred. Because its entire case depends upon demonstrating that the petitioner's gross income was over 200% of the federal poverty level each month, without such proof, its claim must fail.

### **CONCLUSIONS OF LAW**

The county agency cannot recover the FoodShare provided to the petitioner from January through June 2013 because it has not proven by the preponderance of the credible evidence that her gross income exceeded the program's limit.

**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 take all steps necessary to remove the finding from the Department's records that the petitioner was overpaid \$1,989 in FoodShare from January through June 2013 and that it end any attempt to recover these benefits.

**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 6th day of September, 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 September 6, 2013.

Douglas County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability