



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/151132

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 02, 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 August 28, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is liable for a FoodShare overissuance in the amount of \$1,815 for the period from December 1, 2012 to April 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: Jose Silvestre

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 9 of 2012 a notice was sent to petitioner, a FS recipient with a FS group of 2, indicating that she was required to report any increase in household income that raised the household income above \$1,594. This report was due by the 10<sup>th</sup> day of the month following such increase.
3. In September 2012, petitioner completed a six-month report form and did not indicate any changes.

4. On October 5, 2012, the state employment database indicated a new hire report for petitioner's son [REDACTED] who also lived in her household and was on the FS case. The employer was [REDACTED].
5. On October 10, 2012, the state employment database shows a new hire report for petitioner with [REDACTED].
6. The October household wages exceeded 130% of the federal poverty level (see state wage records in ex. #1).
7. Petitioner never reported the new employment or income.
8. On March 14, 2013, the agency discovered the discrepancies between the reported employment and income and the state database data regarding employment and income. The agency sought income and employment verification from petitioner. No verification was received by the agency.
9. On March 26, 2013, the FS case was closed by the agency due to no verification.
10. On July 18, 2013, the Department sent a Notification of FS Overissuance indicating a liability for \$1,815 for the period from December 1, 2012 to April 30, 2013.

### 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).

An FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook, App. 6.1.1.2. 130% of poverty as of October 1, 2012 was \$1,640 for a household of two.

Petitioner argued that she did report the employment to the agency. Petitioner argued that she did, in fact, report the employment and income change and fully expected her FS allotment to drop. But, it does not matter whether she reported the change. The question is only whether she received more FS than to which she was entitled. Even if the agency failed to process the change, if she received more FS due to an agency error it would still need to be repaid. But, here there is no evidence other than petitioner's statement to believe that this was an agency error.

Petitioner also speculates that her son's employment income is being counted twice by the state. But, petitioner offered no exhibits such as paystubs or affidavits to refute the state wage records. Petitioner's son's employer also apparently did not file an employer verification as requested by the Department. Petitioner's son did not testify. At one point during the hearing, petitioner argued that her son lost the job with [REDACTED] in October 2012 and did not work again until he was hired at [REDACTED] on March 12, 2013. But, this was inconsistent with other statements she made during the hearing. The state wage record is the best evidence available.

On this record, I can only find that household income rose above 130% of poverty in October 2013 as [REDACTED]'s wages from [REDACTED] for the 4<sup>th</sup> quarter alone were \$4,799. Petitioner was also employed during that quarter and earned a gross income of \$2,320.98.

With the change in employment and income taking place in October, it should have been reported by November 10 and implemented December 1. Had it been reported FS would have closed December 1 2012. Thus I must conclude that the county correctly determined the FS overpayment.

Petitioner claims that her circumstances have changed. She may indeed be eligible for FS at this point. But, I am not deciding any question relating to present eligibility. I suggest that petitioner consider reapplying for FS if she has not already done so.

**CONCLUSIONS OF LAW**

The Department did not err in calculating a \$1,815 FS overissuance against petitioner.

**THEREFORE, it is ORDERED**

That this matter 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 19th day of September, 2013

---

\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoef, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 19, 2013.

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