



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/151297

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 13, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the PACU - 5173 in regard to FoodShare benefits (FS), a hearing was held on September 09, 2013, at Madison, Wisconsin.

The issue for determination is whether the Department erred in its determination that petitioner is liable for a FoodShare overissuance in the amount of \$1,465 as part of claim # [REDACTED].

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: Judy Johnson  
PACU - 5173  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner was an adult named in a case for Wisconsin FS benefits with [REDACTED] [REDACTED] and two children from December 26, 2012 to the end of February 2013.
3. The family had previously enrolled in FS in the state of Iowa.

4. During this time, the group was also receiving benefits in the state of Iowa.
5. The Department sent a Notification of FS Overissuance on July 15, 2013 indicating his liability for a FS overissuance in the amount of \$1,465 for the period from 12/26/12 to 2/28/13.
6. Petitioner filed an appeal.

### **DISCUSSION**

Federal law requires *all* FS overpayments be recovered, regardless of whether the recipient or the county is at fault. Those regulations provide, in relevant part, as follows:

*(a) Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .*

7 CFR 273.18 (emphasis added). Furthermore, a household may not receive benefits in two different states at the same time:

#### ***3.4.1 Dual Membership & Duplicate Benefits***

7 CFR 273.3(a)

*A person cannot be a member of more than 1 food unit and 1 FS group in the same month except residents of shelters for battered women and children.*

***Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits.***

FS WI Handbook at § 3.4.1.

Petitioner does not dispute that duplicate benefits were issued in Iowa and Wisconsin during the pertinent period. Petitioner's argument is that he should not be liable for the overpayment because he was not actually in the Wisconsin household with the family during the overissuance period. The overissuance period claimed by the Department is December 26, 2012 through February 28, 2013. Petitioner provided an exhibit (see ex. #2) which was a letter from a temp company indicating employment in Iowa from 10/9/12 to 12/21/12 and then beginning again on 2/11/13. I am not sure what the petitioner intended this to prove. It certainly does not prove that he was not in the Wisconsin household. In fact, I find that the gap of no employment from 12/21/12 begins just 5 days before the overpayment. If he was unemployed in IA, he could well have come to Wisconsin and been in the household when the other adult applied for WI FS on December 26, 2013. Similarly, he returned to IA employment on February 11 and was removed from the Wisconsin FS case on February 28 after being reported out of the home by [REDACTED]. The document is not helpful for petitioner.

During the hearing, petitioner once claimed that he never lived with [REDACTED] in Wisconsin. He stated this in his request for hearing as well (see ex. #1). At another point in the hearing, when inquiring about petitioner still receiving his mail that is sent to [REDACTED], WI, petitioner responded that he had been in Iowa for eight months. He later explained that he only went up to visit [REDACTED] for a few days. A few minutes after that, petitioner elucidated: "well, I have been down here ever since, it was toward the beginning of the year...it was towards the beginning of the year...I think it was in April I think or something like that...I can't remember...the first few month of, um, the first month...I can't remember...May or January or July." Petitioner was unable to articulate any cogent thought or argument to explain where he lived at any time during the pertinent period. He was no credible. He appeared to be trying to come up with a story that would fit, or he had no reliable

memory at all. It does not matter the reason, the remaining fact is that petitioner did not rebut any assertion of the Department credibly or reliably.

**CONCLUSIONS OF LAW**

The Department did not err in its determination that petitioner is liable for a FoodShare overissuance in the amount of \$1,465 as part of claim # [REDACTED].

**THEREFORE, it is ORDERED**

That this appeal 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 27th day of September, 2013

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\sJohn P. Tedesco  
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 27, 2013.

PACU - 5173  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability