



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/151867

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 05, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Monroe County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on October 08, 2013.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Tom Miller

Monroe County Department of Human Services  
Community Services Bldg.  
14301 Cty Hwy B, Box 19  
Sparta, WI 54656-4509

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.
2. The county agency alleges that the petitioner was overpaid \$1,713.00 in FoodShare benefits from November 1, 2012, through April 30, 2013, because it failed to budget her adult child's income.
3. The petitioner's household consists of her and her adult child.

4. The petitioner's son was employed by WalMart during the overpayment period.

### DISCUSSION

The petitioner lives with her adult son, who was an employee of WalMart during the period of November 1, 2012, through April 30, 2013. FoodShare rules state that "[h]ousehold income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section." 7 CFR § 273.9(b). Although the petitioner gave the county agency enough information for it to be aware of her son's age, the agency failed to inquire as to his income when initially determining her allotment for November, 2012. It now contends that she received \$1,713.00 more FS benefits than she was entitled to from November 1, 2012, through April 30, 2013.

The petitioner does not dispute the agency's figures, and a review of its FoodShare Overpayment Worksheet indicates those figures are correct. *See FoodShare Handbook*, § 8.1.8. Rather, she contends that it is unfair to make her responsible for the agency's error. She credibly testified that she understood that she was only applying for benefits for herself, and that she was never asked about her son's income. Unfamiliar with the FS program, she did not understand that her son would be included in her "household."

I understand the hardship the county's error causes the petitioner. She does not have enough money to live on much less repay this overpayment. Nevertheless, federal regulations require state agencies to "establish a claim against any household that has received more food stamp benefits than it is entitled to receive." 7 CFR § 273.18(a). This means that recipients must repay overpayments even when, as here, **the fault rests solely with the county agency**. Administrative law judges have no equitable powers that would allow them to consider the fairness of a situation. Therefore, I must uphold the agency's finding that the petitioner must repay the \$1,713.00 in FoodShare benefits that she was not entitled to receive.

### CONCLUSIONS OF LAW

The county agency correctly determined that the petitioner must repay an overpayment of FoodShare that occurred when the agency failed to count her adult son's income when determining her allotment.

**NOW, THEREFORE, it is ORDERED**

That the petition herein be and the same 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 Madison,  
Wisconsin, this 31st day of October, 2013

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\sPeter McCombs  
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 31, 2013.

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