



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/152023

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 11, 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 hearing was held on October 10, 2013, by telephone.

The issue for determination is whether the petitioner was overpaid FS benefits for the December 3, 2012 through August 31, 2013, period.

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, Supervisor  
Western Region for Economic Assistance Consortium  
LaCrosse, WI 54602-4002

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.
2. The petitioner received FS as a household of four persons (self and 3 minor children) from at least December 2012 through August 2013.

3. On August 22, 2013, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$3,406 in FS for the 12/3/12 – 8/31/13 period (claim # [REDACTED]). Exhibit 1. The overpayment was due to client error.
4. The petitioner has two children in common with Mr. [REDACTED] [REDACTED]. She, [REDACTED], and their children lived together as of October 2012, at [REDACTED], [REDACTED], Wisconsin [REDACTED]. The petitioner's name is on the lease for that residence from at least December 2012 through August 2013.
5. The petitioner had a falling out with Mr. [REDACTED] in late December 2012, and briefly lived with her aunt, [REDACTED] [REDACTED], at [REDACTED], [REDACTED], Wisconsin. She took one of her children with her. The petitioner did not report this event to the Department. She returned to Mr. [REDACTED] at their [REDACTED] residence by February 2013.
5. The petitioner had another falling out with Mr. [REDACTED] in mid-May 2013, after which she and one child again moved in with her aunt. The petitioner did not report this event until June 12. She returned to Mr. [REDACTED] at their [REDACTED] residence in mid-June, and reported his presence in her household to the agency on June 20, 2013.
5. Mr. [REDACTED] was employed throughout the period. The petitioner earns approximately \$16,000 annually, and Mr. [REDACTED] earns more than that. The petitioner did not supply the contract investigator with a signed release form (such a form was given to her) to allow wage information verification with Mr. [REDACTED]'s employer.

### DISCUSSION

#### I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

#### **273.18 Claims against households.**

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) ***Benefits that are overpaid*** or
- (ii) Benefits that are trafficked. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

(4) The following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount – (1) Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment

...

(e) *Initiating collection actions and managing claims.*

(1) *Applicability.* State **agencies must begin collection action on all claims** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>). The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected.

## II. THE PETITIONER WAS OVERPAID FS FOR THE 12/1/12 – 8/31/13 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the determination that the household has income above the eligibility limit is in dispute. Rather, the petitioner explained that her failure to report Mr. [REDACTED]'s presence in the household was a misunderstanding.

The preponderance of the evidence supports a finding that the petitioner and Mr. [REDACTED] were living together for the bulk of the overpayment period. Their two separations were brief. To avoid this overpayment, the petitioner should have reported Mr. [REDACTED]'s presence in her household when she applied in December 2012. In any event, as stated above, the overpayment must be recovered even if the petitioner was not at fault for her failure to correctly report household size.

### CONCLUSIONS OF LAW

1. The petitioner was overpaid \$3,406 FS from December, 2012 through August 31, 2013, due to client error.
2. The county agency is correctly pursuing recovery of that overpayment, pursuant to federal law.

**THEREFORE, it is**

**ORDERED**

That the petition 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 25th day of October, 2013

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\sNancy J. Gagnon  
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 25, 2013.

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