



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/152273

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 19, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on October 17, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the county agency correctly determined that the petitioner must repay an alleged overpayment of FoodShare.

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: Lynnae Boyenga

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. In February 2013 the petitioner had a review for FS. At that time the agency incorrectly budgeted petitioner's husband's earned income causing petitioner to receive more FS than to which she was entitled.

3. On August 18, 2013 the agency issued a notice of FS overissuance to petitioner stating that she was overpaid \$1735 in FS for the period of April – August 2013 because the agency had erred in budgeting the husband’s income for that period. See Exhibit 4.

### **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, §7.3.1.2.

The county agency has the burden of proving the overpayment by the preponderance of the credible evidence. 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). The amount it should have received is determined by the size of the household and net income; net income is determined by subtracting those deductions—and only those deductions—found in 7 CFR §273.9(d) from gross income.

In sum, the agency erred here causing the overpayment when it incorrectly budgeted the husband’s earned income. The agency fully agreed with that at hearing. And, as stated above, the agency must recover FS overpayments even if the agency caused it. The petitioner provided no rebuttal to the establishment of the overpayment itself. However, the petitioner raised a credible rebuttal to the amount of the overpayment in that it appears the agency did not use the actual household income and expenses during the overpayment period. The agency agreed at hearing that it would redetermine the overpayment if the petitioner could provide verification of the household income and expenses (in order to determine the allowable deductions) from April 2013 to August 2013. Thus, I will remand the matter to allow the petitioner an opportunity to provide verification of household income and expenses for the available deductions, if any, from April 2013 to August 2013 to the agency to redetermine the overpayment amount. If the petitioner does not provide that verification, the overpayment will stand as the agency was using the best evidence available to it when determining the overpayment. If the agency redetermines a new amount, or if the amount of overpayment stands, then petitioner is reminded that she can repay the overpayment through her current FS or by setting up a different repayment arrangement with the agency to which the agency agrees.

### **CONCLUSIONS OF LAW**

1. The county agency correctly determined that the petitioner must repay an alleged overpayment of FoodShare for the period of April 2013 to August 2013.
2. The agency agreed to redetermine the amount of the overpayment using actual income and expenses during the overpayment period if verified by the petitioner.

**THEREFORE, it is**

**ORDERED**

That the petitioner submit to Ms. Boyenga the income and expense verification for the period of April 2013 to August 2013 within 20 days of the date of this decision, but no later than November 27, 2013. If, and only if, petitioner timely provides this verification, then the agency shall redetermine the overpayment amount for April 2013 to August 2013, and issue a notice of decision regarding same. This action shall be taken within 20 days of the date that the agency receives the verification. If the petitioner fails to timely provide the verification, then the original overpayment amount will stand as \$1735.

**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).

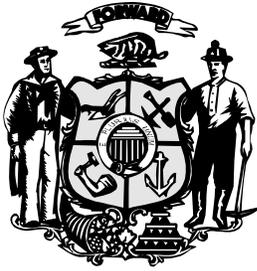
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 Milwaukee,  
Wisconsin, this 7th day of November, 2013

---

\sKelly Cochran  
Administrative Law Judge  
Division of Hearings and Appeals



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

Brian Hayes, 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 November 7, 2013.

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