



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/152558

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 2, 2013, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 6, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly used the entire amount of a supplemental FS payment to offset an overpayment.

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: Katherine May  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who receives FS.
2. In early 2013 petitioner was notified that she was overpaid \$657 in FS, claim no. [REDACTED]. Petitioner did not appeal that notice and does not contest the overpayment.

3. In July, 2013 petitioner reported that her husband was out of the household, but the agency incorrectly added him back to the household for September, 2013 benefits. With his income added back petitioner's FS were reduced to \$16 for September and \$6 for October.
4. Petitioner appealed the reduction, and in the appeal process the error was discovered. With petitioner's husband taken out of the case for September and October, 2013, petitioner was entitled to supplemental FS. The agency issued supplemental FS totaling \$266 for those two months.
5. The supplement was intercepted and applied to the overpayment.

### DISCUSSION

Although petitioner originally appealed the reduction of FS, at the hearing the issue was whether the agency correctly intercepted the \$266 supplement to apply to the overpayment that had been determined in early 2013.

The FS Handbook, Appendix 7.4.1.1 requires the agency to restore FS when it is discovered that the household was under-issued benefits. A hearing request made by the household is one of the ways that an under-issuance can be discovered. However, the Handbook also provides, at App. 7.3.1.3, that the restoration should be offset against any FS claim amount when both situations exist.

This procedure is required by federal FS law, specifically 7 C.F.R. §273.18(g)(3): “(3) *Offsets to restored benefits.* You must reduce any restored benefits owed to a household by the amount of any outstanding claim. This may be done at any time during the claim establishment and collection process.” The key is that the offset must occur during when the claim is established as well as during the collection process.

In this case petitioner's claim is in the process of being collected. She was eligible for a restoration of benefits due to the error of adding her husband back into the household after he initially was removed. Based upon the law the agency had to offset the restoration against the prior claim. The agency did not have to ask petitioner's permission to do so, and in fact the offset probably occurred within the State's computer system without input by the local workers.

### CONCLUSIONS OF LAW

The agency correctly offset petitioner's restored FS against a prior FS overpayment claim.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 11th day of November, 2013

---

\sBrian C. Schneider  
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 11, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability