



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/153951

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 04, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Columbia County Health & Human Services agency in regard to FoodShare benefits (FS), a telephonic hearing was held on January 08, 2014, at Portage, Wisconsin. At the request of the parties, the record was held open for closing arguments until February 19, 2014 for consecutive submissions by the parties. The county representative submitted its closing argument to DHA and petitioner on January 22, 2014, and petitioner submitted its response on February 5, 2014. No further submission was sent to DHA. Both submissions are received into the hearing record.

At the request of [REDACTED] [REDACTED] and her husband, [REDACTED] [REDACTED], the hearing for the two cases FOP/153951 and FOP/ 153948 were consolidated into the one hearing on January 8, 2014.

The issue for determination is whether the county agency is correctly seeking recovery of a FoodShare (FS) overpayment of \$4,443.00 to the petitioner during the period of October 9, 2012 through September 30, 2013, due to failure to timely and fully report (under-reporting) her husband's earned income for a FS group of six resulting in reduced household FS benefits during the entire overpayment period.

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, Room 651  
Madison, Wisconsin 53703

By: Jessica McBride, ES Supervisor  
Columbia County Health & Human Services  
2652 Murphy Rd  
PO Box 136  
Portage, WI 53901

## ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County who resides with her husband, [REDACTED], and their four children.
2. The petitioner received FoodShare (FS) benefits for her household of six during the period of October, 2012 through September, 2013.
3. [REDACTED] is an employee of [REDACTED], and received the following earned income: a) October, 2012 - \$3,550.71; b) November, 2012 - \$3,550.71; c) December, 2012 - \$3,550.71; d) January, 2013 - \$3,518.20; e) February, 2013 - \$ 3,518.20; f) March, 2013 - \$ 3,518.20; g) April, 2013 - \$3,887.48; h) May, 2013 - \$ 3,887.48; i) June, 2013 - \$3,887.48; j) July, 2013 - \$5,477.46; k) August, 2013 - \$5,477.46; and l) September, 2013 - \$5,477.46.
4. The petitioner failed to timely and fully report her husband's earned income to the county agency and instead under-reported his income as follows: a) October, 2012 - \$2,484.00; b) November, 2012 - \$2,484.00; c) December, 2012 - \$2,484.00; d) January, 2013 - \$2,484.00; e) February, 2013 - \$2,484.00; f) March, 2013 - \$3,140.58; g) April, 2013 - \$3,140.58; h) May, 2013 - \$3,140.58; i) June, 2013 - \$3,140.58; j) July, 2013 - \$3,140.58; k) August, 2013 - \$3,140.58; and l) September, 2013 - \$3,140.58.
5. [REDACTED] received an increase in his earned income during September, 2013 which was required to be reported to the county agency during October, 2012. The increase in his earned income was also required to be reported to the agency starting November, 2012 for MA purposes.
6. If petitioner had fully reported her husband's earned income to the county agency, then that increased household income would have reduced the petitioner's FS benefits for the entire period of October 9, 2012 through September 30, 2013.
7. The petitioner did not dispute her husband's earned income as stated in Finding of Fact #3 above.
8. The county agency sent an October 7, 2013 FS Overpayment Notice to the petitioner which stated that petitioner received a FS overpayment of \$4,443.00 during the period of October 9, 2012 through September 30, 2013, due to petitioner's failure to timely and fully report her husband's earned income to the county agency.
9. The county agency's October 7, 2013 FS overpayment worksheets indicate how the \$4,443.00 FS overpayment was accurately calculated.
10. In their February 4, 2013 closing statement, [REDACTED] and [REDACTED] basically stipulated that after receiving the answers to their questions from county agency personnel, they "now understand how the overpayment was figured, and agree to those numbers."

**DISCUSSION**

All FS applicants and recipients have a duty to accurately and truthfully report income to the county agency. 7 C.F.R. §273.12, "Reporting requirements." Furthermore, a FS recipient has the duty to cooperate in provide accurate and true income information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS eligibility and benefits. 7 C.F.R. §273.2(d), "Household cooperation." As explained in the above Findings of Fact, petitioner failed to accurately and fully report [REDACTED]'s earned income to the county agency for the period of October, 2012 through September, 2013.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2)(emphasis added).

During the January 8, 2014 hearing, the county agency representative, ES Supervisor Jessica McBride, presented a well-organized case, and established that the petitioner failed to timely report her husband's earned income during or report that increased household income as required by October, 2012. As a result, [REDACTED]'s earned income was not fully budgeted as income to the FS household in determining the petitioner's FS household eligibility and benefits during the period of October, 2012 through September, 2013. The county agency established that petitioner's household income was substantially above the income reported and budgeted by the county (due to petitioner's failure to fully report her husband's income) resulting in the reduction in petitioner's accurate FS benefits during the entire FS overpayment period. The petitioner did not contest that she had received FS benefits during the period of October 1, 2012 through September 30, 2013. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's FS overpayment determination of \$4,443.00 for that overpayment period.

During the hearing, petitioner explained that she primarily requested the hearing because she did not understand how the FS overpayment had been calculated. However, in petitioner's In their February 4, 2013 closing statement, [REDACTED] and [REDACTED] basically stipulated that after receiving the answers to their questions from county agency personnel, they "now understand how the overpayment was figured, and agree to those numbers."

The petitioner also alleged that she "misunderstood" that she needed to run in all of her husband's paystubs. However, it is clear that the petitioner was required to fully report all of the household's income to the county agency. The petitioner generally contended that it was unfair that the county agency was seeking recovery of the overpayment. However, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: **"The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . ."** 7 C.F.R. §273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Accordingly, the county agency is correctly seeking recovery of a FoodShare (FS) overpayment of \$4,443.00 to the petitioner during the period of October 9, 2012 through September 30, 2013, due to failure to timely and fully report her husband's earned income for a FS group of six resulting in reduced household FS benefits during the entire overpayment period.

### CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a FoodShare (FS) overpayment of \$4,443.00 to the petitioner during the period of October 9, 2012 through September 30, 2013, due to failure to timely and fully report (under-reporting) her husband's earned income for a FS group of six resulting in reduced household FS benefits during the entire overpayment period.

**THEREFORE, it is**

**ORDERED**

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, Room 651, 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 14th day of March, 2014

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\sGary M. Wolkstein  
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 March 14, 2014.

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