



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/154000

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 09, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Columbia County Health & Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on January 08, 2014, at Portage, Wisconsin. At the request of petitioner, the hearing set for September 25, 2013 was rescheduled. At the request of the parties, the record was held open for 45 days for the submission of the county agency's closing argument with attachments, and then for the petitioner to submit a responsive closing argument with possible attachments as to why the alleged FS overpayment was inaccurate or incorrect. The county representative timely submitted its closing argument with detailed exhibits to establish the FS overpayment. The petitioner failed to submit any response or closing argument to DHA even by the date of this decision.

The issue for determination is whether the county agency is correctly seeking recovery of FoodShare (FS) overpayments totaling \$2,721.00 to the petitioner during the period of June 1, 2013 to November 30, 2013, due to the failure of petitioner and his girlfriend (FS casehead) to timely report petitioner's earned income from two sources of employment income resulting in household net income above the FS net income eligibility limit during all but one month of the entire FS 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, ESS

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 resided in the FoodShare (FS) household of his girlfriend, [REDACTED] [REDACTED] [REDACTED] with their child in common for a FS group of three during the FS overpayment period of June 1, 2013 to November 30, 2013.
2. During petitioner's May, 2013 review application, the FS casehead, [REDACTED] [REDACTED] [REDACTED], failed to report petitioner's earned income from [REDACTED] [REDACTED] [REDACTED] or from a temporary employment agency, [REDACTED] [REDACTED] [REDACTED].
3. [REDACTED] [REDACTED] completed her FS review interview and reported only her earned income from [REDACTED] [REDACTED] as her total FS household income in her six month report form (SMRF) and at her May, 2013 review application. The petitioner also did not report his earned income to the county agency.
4. [REDACTED] [REDACTED] had the following monthly earned income at [REDACTED]: a) June, 2013 - \$917.92; and b) July, 2013 through November, 2013 - \$1,231.96 for each of those months.
5. [REDACTED] [REDACTED] had the following total monthly earned income from [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED]: a) June, 2013 - \$1,382.68; and b) July, 2013 through November, 2013 - \$1,464.27 for each of those months.
6. The FS net income limit for a FS household of three was \$1,591 during the period of June, 2013 through September, 2013, and that the net income limit for three increased to \$1,628 as of October, 2013.
7. The petitioner's FS household net income was above the FS net income limit for a group of three during the entire FS overpayment period of July, 2013 to November 30, 2013. During the one month of June, 2013, the household income was not over the net income limit but resulted in a FS overpayment of \$382 out of the total FS payment of \$472 for June, 2013.
8. Because petitioner's earned income was not timely reported on any of [REDACTED] [REDACTED]'s reporting documents or reviews, it caused [REDACTED] [REDACTED] to be overpaid FoodShare benefits because: a) her total net household income was above the FS net income eligibility limit of \$1,591 (increased to \$1,628) for a household of three during the entire FS overpayment period of July, 2013 to November 30, 2012 (except June, 2013), and thus was income ineligible for FS benefits for that period.
9. The county agency sent December 5, 2013 Notices of Food Stamp Overissuance to [REDACTED] [REDACTED] and to petitioner stating that she had received \$2,721.00 in FS overissuances during the period of June 1, 2013 to November 30, 2013 in FS Claim # [REDACTED] due to petitioner's failure to timely report to the county agency [REDACTED] [REDACTED]'s earned income from his two employments resulting in household income above the FS net income limit for a group of three.

### 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, ██████████ ██████████ failed to report her boyfriend (and father of her child), ██████████ ██████████'s earned income to the county agency for the period of June, 2013 to November 30, 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).

The 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, Appendix 22.2.1. In addition, those regulations also provide, in relevant part, as follows:

- (a) Establishing claims against households. **All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household.** The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

Therefore, the county agency is correctly seeking recovery of the FS overpayment not only from ██████████ ██████████, but also from her boyfriend, ██████████ ██████████, based upon joint and several liability for the household's FS overpayment.

During the January 8, 2014 hearing, the county agency representative, Jessica McBride presented testimony and some evidence that the FS case head, ██████████ ██████████ failed to report at all the petitioner's earned income from two of his employers to the county agency. While the record was held open, ESS McBride provided a detailed closing argument with convincing exhibits to establish that the county agency was correctly pursuing the \$2,721 FS overpayment against ██████████ ██████████ and the petitioner. ██████████ ██████████ Badger's employment income was not budgeted as income to the FS household in determining the petitioner's FS household eligibility and benefits. The county agency established that petitioner's net household income was above the net income limit for a household of three for the entire FS overpayment period except June, 2013. The petitioner did not contest that his girlfriend had received FS benefits during the period of June 1, 2013 to November 30, 2013. Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's FS overpayment calculation of \$2,721.00 for that overpayment period.

This Administrative Law Judge (ALJ) wanted to provide every opportunity for both the county agency and the petitioner to provide clear, reliable documentation regarding ██████████ ██████████'s failure to report household income, and the accurate amount of the petitioner's household income during the overpayment period in question. Thus, the record was held open for the submission of the county agency's closing argument with attachments, and then for the petitioner to submit a responsive closing argument with possible attachments as to why the alleged FS overpayment was inaccurate or incorrect. The county representative timely submitted its convincing closing argument with detailed exhibits to establish the FS overpayment. The petitioner failed to submit any response or closing argument to DHA even by the date of this decision. See above Preliminary Recitals.

The petitioner contended that it was unfair that the county agency was seeking recovery of the overpayment. During the hearing, petitioner alleged in vague terms, with no documentation, that she did verbally report changes in household income to an ESS worker. However, petitioner was unable to provide any reliable evidence of such reporting, especially given the multiple opportunities during her FS review period in which she could have reported ██████████ ██████████'s full and accurate earned income from his employments, but failed to do so. In any case, 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, due to joint and several liability, the county agency is correctly seeking recovery of FoodShare (FS) overpayments against the petitioner during the period of June 1, 2013 to November 30, 2013 in the amount of \$2,721.00, due to the failure of petitioner’s girlfriend (FS casehead) to timely report petitioner’s earned income resulting in household net income above the FS net income eligibility limit during all but one month of the entire FS overpayment period.**

### **CONCLUSIONS OF LAW**

Due to joint and several liability, the county agency is correctly seeking recovery of FoodShare (FS) overpayments totaling \$2,721.00 against the petitioner during the period of June 1, 2013 to November 30, 2013, due to the failure of petitioner’s girlfriend (FS casehead) to timely report petitioner’s earned income resulting in household net income above the FS net income eligibility limit during all but one month of the entire FS overpayment period.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 18th 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 18, 2014.

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