



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

REHEARING DECISION

FOP/154066

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 12, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was scheduled for January 15, 2014. That hearing was rescheduled at petitioner's request due to illness for February 11, 2014. Petitioner failed to appear for the February 11, 2014, hearing, and the matter was dismissed. Petitioner requested a rehearing, which was denied on April 2, 2014, for failure to provide sufficient grounds to grant a rehearing. Petitioner submitted a subsequent Request for Rehearing which did provide sufficient grounds for granting a rehearing, and a telephone hearing was held on May 13, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is liable for an overpayment of FS benefits due to receipt of duplicate FS benefits in Wisconsin and [REDACTED].

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: Aimee Rentmeester  
Public Assistance Collection Unit  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FS benefits in Milwaukee County from June 23, 2013 through August 31, 2013.
2. On June 26, 2013, the respondent applied for FS benefits from the State of Wisconsin. She reported her residence as [REDACTED]. She reported that she was not receiving FoodShare or SNAP benefits at the time of application. She signed the application certifying that her answers were correct and complete.
3. From November, 2012 - August, 2013, respondent received \$200/month in FS benefits from the State of [REDACTED].
4. On June 26, 2013, the State of Wisconsin issued FS benefits of \$233 to the respondent. On August 11, 2013, the State of Wisconsin issued FS benefits of \$200 to the respondent.
5. Respondent used her FS benefits from the State of Wisconsin and her SNAP benefits from the State of [REDACTED] in Wisconsin in June, July and August, 2013.
6. On November 1, 2013, the respondent issued a Notification of FS Overissuance to petitioner identifying an overpayment in the amount of \$433.00 during the period of June 26, 2013, through August 30, 2013 (Claim No. [REDACTED]).

### DISCUSSION

Federal regulations require state agencies to “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. A person cannot receive FoodShare from two different project areas at once. 7 CFR § 273.3(a). A project area is the jurisdiction issuing FoodShare; it can be a county, some other entity set up by the state, or the entire state. 7 CFR § 271.2.

Thus, even if a FS agency in either Wisconsin or [REDACTED] was the cause of the overpayment, the petitioner must still repay it. The agency believes that an overpayment occurred here because the petitioner’s household continued receiving FS from [REDACTED] even after she moved to Wisconsin. The applicable regulation can be found at 7 CFR §273.3(a) and the *FoodShare Wisconsin Handbook* § 3.4.1, which states:

A person cannot be a member of more than 1 food unit and 1 FS group in the same month except residents of shelters for battered women and children.

Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits. States typically issue benefits on either a calendar or fiscal month. A fiscal month cycle provides benefits from a date in one month to a corresponding date in the next month. California (Fresno), Massachusetts, Nevada and South Dakota issue on a fiscal month cycle. Illinois issues benefits by calendar month (first day through the last day of the month) and by fiscal month (16th through 15th). Wisconsin issues on a calendar month cycle.

\*\*\*\* (Text – box example omitted here.)

Workers should contact the other state to verify the FS end date.

In any Fair Hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case. This applies when the action is based on proving that a person was overpaid FS. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the county agency's evidence of correct action by the county agency in determining the negative action was required.

The petitioner concedes that she did formerly live in [REDACTED] and received FS benefits from that state. However, the petitioner stated that she told her Wisconsin worker at the time of application that she received FS benefits in [REDACTED]. Petitioner testified that she did not recall utilizing [REDACTED] FS benefits after moving here.

The documentation obtained from [REDACTED] is quite clear. FS benefits were issued to her electronic benefits card in each of the three months in the Wisconsin overpayment period. Respondent's exhibits R-3 and R-5 show that petitioner used both [REDACTED] FS benefits and Wisconsin FS benefits in Wisconsin in June, July, and August of 2013. The agency has established a prima facie case showing that the petitioner was overpaid by Wisconsin while she was receiving FS from [REDACTED]. The petitioner has failed to credibly rebut this showing. The FS overpayment determination must be sustained under these facts.

#### CONCLUSIONS OF LAW

1. The petitioner was ineligible for Wisconsin FS during the months she was receiving FS from [REDACTED], i.e., June through August, 2013.
2. The petitioner received an overpayment of FS in Wisconsin in the amount of \$433.00 during the period of June 26, 2013, through August 30, 2013.

**NOW, THEREFORE, it is ORDERED**

That the petition for review herein be, and the same hereby is, 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 30th day of May, 2014.

---

\sPeter McCombs  
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 May 30, 2014.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability