



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/154366

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 18, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Trempealeau County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on January 29, 2014, by telephone.

The issue for determination is whether the petitioner was overpaid FS of \$1,585 from August 2, 2012 through December 13, 2012 (claim # [REDACTED]).

There appeared at that time 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: Tom Miller, ES Supr.  
Trempealeau County Department of Soc. Services  
36245 Main St.  
PO Box 67  
Whitehall, WI 54773-0067

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Trempealeau County.
2. The petitioner received FS as a household of two persons (self and child CT)) from at least January 2012 through December 2012. CT reached the age of 18 in April 2012.

3. On October 15, 2013, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$1,585 in FS for the 8/1/12 – 12/31/12 period (claim # [REDACTED]). Exhibit 1. The overpayment was due to client error.
4. CT began a job for approximately 30 hours weekly at [REDACTED] on June 25, 2012, and received her first paycheck on July 13. With the exception of a short employment break in early August, CT continued to work for [REDACTED]'s into December 2012. The petitioner did not report this employment income to the Department.
5. The petitioner's case was due for a periodic review in August 2012. During her August 6 review interview, the petitioner stated that the only household income was the petitioner's Unemployment Compensation of \$145 weekly. The petitioner then signed a summary document that repeated the information from the interview, on August 14, 2012.
6. On September 1, 2012, the petitioner began employment with Sodexo Inc. She did not report this employment to the Department. The Department learned of this employment income on November 30, 2012, from another source. By November 30, it was too late to adjust the petitioner's December FS allotment down to the correct level.
7. The petitioner's FS benefits for the August through December 2012 period were overpayments, because the income used to determine the benefits was incorrect.

## DISCUSSION

### I. AN FS OVERPAYMENT MUST BE RECOVERED.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

#### **273.18 Claims against households.**

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) ***Benefits that are overpaid*** or
- (ii) Benefits that are trafficked. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

(4) The following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount – (1) Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment

...

(e) *Initiating collection actions and managing claims.*

(1) *Applicability.* State **agencies must begin collection action on all claims** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>). The above is a long way of saying that when an overpayment occurs, the overpayment must be collected. There is a time limit as to how far back the Department can go to collect overpayments caused by the Department.

## II. THE PETITIONER WAS OVERPAID FS FOR THE 8/1/12 – 12/31/12 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's income is in dispute. Rather, the petitioner explained that she had sent paystubs for herself and CT to the agency twice (dates unknown), so any overpayment was not her fault. The petitioner also asserts that she timely telephoned the Department's call center in late August 2012, to report the employment of herself and CT.

The agency representative credibly testified that the Department has no record of receiving paystubs from the petitioner during the overpayment period. Also, the Call Center has no record of the petitioner making contact in August to report an employment or income change. Call Center workers are required to enter a notation that a call was received in the Department's Case Comments database, and there is no such notation. The petitioner had no phone records to establish that she made the call. Similarly, she proffered no fax receipt or certified mail receipt to corroborate her assertion that she twice supplied paystubs to the Department. Finally, the petitioner's credibility was damaged by her explanation that she did not report the commencement of her daughter's job by July 2012, because she was waiting to report it at her upcoming August review. That is not the long-established reporting rule; the rule is to make a report within 10 days of the change. Thus, the Department's version of events is the more credible here. The Department has met its burden of establishing that the overpayment occurred, due to client error, by a preponderance of the credible evidence.

### CONCLUSIONS OF LAW

1. The petitioner was overpaid \$1,585 FS from August 1, 2012 through December 31, 2012, due to client error.
2. The county agency is correctly pursuing recovery of that overpayment, pursuant to federal law.

**THEREFORE, it is**

**ORDERED**

That the petition is 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 12th day of February, 2014

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\sNancy J. Gagnon  
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 February 12, 2014.

Trempealeau County Department of Soc Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability