



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/154957

PRELIMINARY RECITALS

Pursuant to a petition filed January 23, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Wood County Human Services – Wis. Rapids in regard to FoodShare benefits (FS), a hearing was held on April 22, 2014, by telephone. Hearings dates of February 26, March 19, and April 17, 2014, were rescheduled at the petitioner’s request. The record was held open for 14 days post-hearing for submission of documents, which were received.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid FS from August 29, 2011 through December 31, 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Beth Ann Richlen
300 Third Street, Suite 210
P. O. Box 6100
Wausau, WI 54402-6100

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Beulah Garcia, Resolution Coordr.
Northern IM Consortium

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rusk County.

2. The petitioner received FS as a household of two persons (self and DT) from at least August 29, 2011, through December 2013.
3. On January 13, 2014, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$6,739 in FS for the 8/29/11 – 12/31/13 period (claim #). Exhibit 1. The overpayment was allegedly due to client error.
4. The petitioner, her husband [REDACTED] [REDACTED] and their child DT lived together at [REDACTED] [REDACTED] [REDACTED], Wisconsin, prior to May 2011. The [REDACTED] [REDACTED] [REDACTED] residence is jointly owned by the petitioner and her husband. The petitioner and her son moved away to her father's residence in [REDACTED], Wisconsin, in May 2011. From July 2011 through January 2012, the petitioner and DT lived with the petitioner's mother at [REDACTED] [REDACTED], Wisconsin. The husband remained at the [REDACTED] [REDACTED] [REDACTED] residence throughout this period. *See*, Exhibits 6, 7.
5. The petitioner and DT resumed living at the [REDACTED] [REDACTED] [REDACTED] residence in mid-January 2012. They lived there continuously through December 31, 2013.
6. The petitioner's husband resided with her at the [REDACTED] [REDACTED] [REDACTED] residence from January 2012 through August 2013. He resumed living at the [REDACTED] [REDACTED] [REDACTED] residence from October 2013 through December 2013.

DISCUSSION

I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

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, even if caused by agency error, the overpayment must be collected. There is a one-year time limit, however, for how far back in time the agency may go if the overpayment was due to agency error. For any overpayment, the Department has the burden of proving that the overpayment occurred, based on a preponderance of the credible evidence.

II. THE PETITIONER WAS OVERPAID FS FOR THE 2/1/12 – 12/31/13 PERIOD.

Neither the arithmetic of the agency's overpayment determination, the amount of the husband's income, nor the amount of the petitioner's income is in dispute. Rather, the petitioner testified that she had provided all requested information to the agency, and that she and her child did not live with her husband at any time during the overpayment period. The petitioner's husband also testified that they did not live together during the overpayment period. Most convincingly, the petitioner supplied documentation to corroborate her assertion that she lived in Racine County in November 2011 (divorce filing), and that her child was enrolled in school in ██████████ for the fall 2011 semester. The school district has no motive to dissemble. I will therefore throw out the portion of the overpayment claim from August 29, 2011 through January 31, 2012 (assuming that she should have reported her early January change in time to affect February 2012 benefits).

The agency retained a private contractor to investigate the petitioner's household status, following receipt of a neighbor's tip. The investigator testified and documented that the husband's vehicle is listed with the ██████████ address. He also testified and documented that both husband and wife gave the ██████████ address as their respective addresses as of 10/1/2013 when their divorce action was re-filed in Rusk County on September 30, 2013. Further, the investigator testified that he interviewed the petitioner on November 27, 2013, at the ██████████ address. At that time, he observed items belonging to the husband at the residence. As the interview progressed, the petitioner acknowledged that the husband was sleeping on the couch at the residence, and stated that the husband had been residing there for approximately three years. *See*, Exhibit 2. The investigator also testified to his April 7, 2013, conversation with ██████████. ██████████ had an affair with the petitioner's husband, which ended in November 2013. For the unspecified duration of the affair, she stated that the husband continued to reside with his wife at the ██████████ address, with the exception of the month of September 2013. During that month, the petitioner directed the husband to leave, and he stayed with ██████████ T. and ██████████. In October 2013, he returned to ██████████. When the affair ended, he advised ██████████ that he was returning to his wife, in an effort to make his marriage work. *See*, Exhibit 5.

The self-serving testimony of the petitioner and her husband for the period beginning with February 2012 was not credible. Although the child's school documentation reflects that his attendance in ██████████ ended in early January 2012, the petitioner ignored the 10-day reporting requirement and did not report her return to the ██████████ residence until April 24, 2012, when she began having trouble accessing medical benefits. The Case Comments entry, a contemporaneously kept business record of the Department, for January 18, 2012, says: processing SMRF [periodic, required reporting document]. Customer did not report working but she has not reported working before. No changes in the SMRF, processed today." *See*, Exhibit 1, Case Comments. Why didn't she report her address change on her

SMRF? Thus, the petitioner has a track record of untruthfulness. Between the competing testimony of the petitioner and the investigator, [REDACTED], I find [REDACTED]'s version of the November 27 interview to be the more credible. Mr. [REDACTED] has no motive to be untruthful. Also, he wrote down his recollection of the interview on the date that it occurred; there is no indication that the petitioner did the same. Thus, her recollection five months later is highly suspect. Finally, the testimony of the cheating husband was vague and unreliable.

I will direct the Department to remove the overpayment amount for September 2013 (\$140), as all indications (*e.g.*, [REDACTED] statement) are that the husband was not in the household for that month.

Finally, a housekeeping note: petitioner objected to admission/moved to strike [REDACTED]'s testimony that he filed a "second report" to the agency on April 7, 2013 (no exhibit number), followed by a "third report" of April 7, 2013 (Exhibit 5). The second report was not allowed into the record because it had not been supplied to the petitioner in advance of hearing, and [REDACTED]'s testimony as to the content of the second report was stricken. The third report/Exhibit 5, was admitted.

CONCLUSIONS OF LAW

1. The petitioner was not overpaid \$1,101.00 FS from August 29, 2011 through January 31, 2012, because she accurately reported her household composition during this period.
2. The petitioner was not overpaid \$140 FS for September 2013, as a household size of two was correct for that month.
3. The Department may pursue recovery of the remaining overpayment, which is \$5,498.00.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to reduce the total FS overpayment amount to \$5,498, in accord with the Conclusions of Law above. In all other respects, the petition 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 21st day of May, 2014

\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 May 21, 2014.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney Beth Ann Richlen