



FH  
[REDACTED]

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

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/155447

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 10, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Calumet County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on March 4, 2014. The Hearing in this matter was held at the same time as the Hearing in the following closely related matter concerning the same petitioner: MOP-155448.

The issue for determination is whether it was correct to establish the following Claim against petitioner for an overpayment of FS: Claim Number [REDACTED] for the time period July 1, 2013 to July 31, 2013 in the total amount of \$475.00.

There appeared at that time via telephone 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: Lynn Brenner, ES Manager  
Calumet County Department of Human Services  
206 Court Street  
Chilton, WI 53014-1198

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Calumet County.
2. The County established the following Claim against petitioner for an overpayment of FS: Claim Number [REDACTED] for the time period July 1, 2013 to July 31, 2013 in the total amount of \$475.00.
3. During the time period of the overpayment petitioner and adult male DA lived together; petitioner and DA have a minor child in common who also lived with them during that the time period of the overpayment.
4. During the time period of the overpayment DA had income.
5. The FS overpayment in *Findings of Fact* #2, above, resulted from the fact that petitioner, DA, and their minor child lived together; DA had income which made them ineligible for the FS they received; petitioner does not dispute this.

### DISCUSSION

The law provides that each person who was an adult member of the FS Household when the overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.2. Further, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2011); FWH 7.3.1.1 & 7.3.1.2.

In this case petitioner does not dispute the overpayment itself.<sup>1</sup> Instead, she argues that the overpayment should be reduced by the amount that she claims she was underpaid in the months of February 2013 and March 2013. However, an FS appeal is timely if it concerns any action by the county agency which occurred in the prior 90 days. 7 C.F.R. § 273.15(g) (2011); Wis. Admin. Code § HA 3.05(3)(a) (February 2013); FWH 6.4.1.; *Income Maintenance Manual* ["IMM"] 3.3.1. An appeal that is not timely must be dismissed for lack of jurisdiction. 7 C.F.R. § 273.15(j)(1)(i) (2011); Wis. Admin. Code § HA 3.05(4)(e) (February 2013). Petitioner's request to review her FS allotments for the months of February 2013 and March 2013 is not timely and the Division of Hearings and Appeals ["DHA"] has no jurisdiction to consider it.

### CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is liable for the FS overpayment detailed in *Findings of Fact* #2, above, and may be made to repay it.

**NOW, THEREFORE, it is**

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<sup>1</sup> A person under 22 years of age who is living with his or her natural or adoptive parent(s) must be included in the same FS household as his or her parent(s). 7 C.F.R. § 273.1(b)(1)(ii) (2011); FWH 3.3.1.3.2. Thus, petitioner DA must be included in the same FS household since they both live with the minor child they have in common.

**ORDERED**

That 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 19th day of March, 2014

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\sSean P. Maloney  
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 19, 2014.

Calumet County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability