



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/155613

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 19, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Eau Claire County Department of Human [REDACTED] in regard to FoodShare benefits (FS), a hearing was held on March 19, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health [REDACTED]  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Aaron Borreson

Eau Claire County Department of Human [REDACTED]  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County. She lives with her two minor children.

2. The county agency notified the petitioner on November 22, 2013, that it would seek to recover a \$3,838 overpayment of FoodShare that allegedly occurred from December 2012 through October 2013.
3. The petitioner completed her FoodShare renewal over the telephone on November 8, 2012. She signed her renewal on November 21, 2013.
4. The county agency notified the petitioner on November 23, 2012, that she would receive \$365 per month in FoodShare benefits. (Her benefits were \$282 in June 2012, \$402 from July 2013 through September 2013, and \$406 in October 2013.) That notice informed the petitioner, "If your household's total monthly income (before taxes) goes over \$1,590.83, you must report it by the 10th day of the next month."
5. The petitioner was on call for [REDACTED] [REDACTED] from June 12, 2012 through July 12, 2013. She was not working the day she completed her online review but did work before and after that date.
6. The petitioner received the following monthly income through [REDACTED] [REDACTED]:
  - a. December 2012: \$1,666.50
  - b. January 2013: \$1,630.75
  - c. February 2013: \$1,745.43
  - d. March 2013: \$1,490.50
  - e. April 2013: \$2,112
  - f. May 2013: \$1,581.25
  - g. June 2013: \$1,493.25
  - h. July 2013: \$1,056
7. The petitioner received the following monthly child support payments:
  - a. December 2012: \$743
  - b. January 2013: \$800
  - c. February 2013: \$800
  - d. March 2013: \$800
  - e. April 2013: \$426.74
  - f. May 2013: \$0
  - g. June 2013: \$0
  - h. July 2013: \$724
  - i. August 2013: \$724
  - j. September 2013: \$181
  - k. October: \$614.95
8. The petitioner received the following monthly income from employment other than [REDACTED] [REDACTED]:
  - a. July 2013: \$546.08
  - b. August 2013: \$2,262.60
  - c. September 2013: \$3,290.49
  - d. October 2013: \$2,286.92

## 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. Recipients must report a change of circumstances within 10 days. 7 CFR § 273.12(a)2. Generally, changes in income must be reported if the income increases to at least 130% of the federal poverty level. Agencies must act on those changes the month after the reported change is due. 7 CFR § 273.12(c)(2). When calculating an overpayment, agencies are instructed to

consider the FS group’s reporting requirements. Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported...The overissuance period begins with the first month had the change been reported timely, and would have been effective up to the month prior to when the case was corrected.

*FoodShare Wisconsin Handbook*, § 7.3.2.1.

The petitioner completed her FoodShare renewal in November 2012 and reported that she had no income at that time. This contention is debatable. She had been working occasionally at for [REDACTED] [REDACTED], but did not have an assignment on the date she completed her renewal. The county agency awarded her household, which consisted of her and her two children, \$365 in FoodShare per month and informed her that she must report if her total income exceeded \$1,590.83. Her income from [REDACTED] [REDACTED] alone exceeded this amount every month from December 2012 until she found regular employment in July 2013. The evidence is inconclusive as to whether she ever reported a change of income, but if she did it was not until she began working at regular employment in July 2013. Whether she reported or not, she continued to receive FoodShare until October 2013. In all, she received \$365 in FoodShare from December 2012 through May 2013, \$282 in June 2013, \$402 from July through September 2013, and \$406 in October 2013. The county agency seeks to recover all of this except for \$61 issued in May 2013 and \$185 issued in June 2013. The total amount it seeks to recover is \$3,838.

I have reviewed the agency’s overpayment worksheets and find no error in its monthly calculations. It grants the petitioner the \$149 standard deduction, which is the only deduction she is entitled to under 7 CFR § 273.9(d); she was not entitled to the 20% earned income deduction before she reported her employment, which, as noted, did not occur before July 2013. If she did report her income at that point, it would not affect the overpayment because she was several hundred dollars over the program’s net income limit in all months except May and June 2013. Although the agency’s monthly calculations are correct, I find that it included two months it should not have in the overpayment. The petitioner’s income did not exceed the reporting limit until December 2012. This means that she was not required to report the change until January 10, 2013, which would have caused the change to go into effect in February 2013. Because FoodShare overpayments are calculated from “the first month had the change been reported timely,” the petitioner’s overpayment began in February 2013. This reduces her overpayment by \$730. Her remaining overpayment is \$3,108. Because the agency must recover all overpayments, she is responsible for repaying this amount.

## CONCLUSIONS OF LAW

1. The petitioner is not responsible for repaying any FoodShare benefits she received in December 2012 and January 2013.
2. The petitioner received \$3,108 more in FoodShare than she was entitled to from February through October 2013 and must repay that amount.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reduce the overpayment of FoodShare sought for the petitioner for the period of December 2012 through October 2013 from \$3,838 to \$3,108.

**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 28th day of March, 2014

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\sMichael D. O'Brien  
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 28, 2014.

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