



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/155631

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 21, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on March 12, 2014.

The issue for determination is whether the agency correctly determined an FS overpayment.

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

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County who is the primary person in an FS household comprised of herself and her husband.

2. On August 13, 2013, the respondent received paystubs pertaining to petitioner's employment as well as her husband's employment. One of petitioner's paystubs and one of her husband's paystubs were labeled "last check."
3. Respondent's worker processed the "last check" paystubs as indications that employment for both petitioner and her husband had ended.
4. Petitioner never intended to report that her husband's employment had ended.
5. On February 6, 2014, the respondent established an overpayment of FS benefits to the petitioner for the period of September through November, 2013, in the total amount of \$1,034.00.
6. Petitioner timely appealed the overpayment.

### DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also, *FoodShare Wisconsin Handbook*, 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, *FoodShare Wisconsin Handbook*, 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. *FoodShare Wisconsin Handbook*, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

As decided in prior cases before the Division of Hearings and Appeals, "discovery" was not the date of referral of a likely overpayment for investigation; discovery is the date when the agency actually determines an overpayment of a fixed amount occurred, and sends a notice to the FS recipient. Overpayments due to client error may be recovered for up to 6 years prior to discovery. However, a BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012), indicates that the "discovery" date is not the date of the agency's FS Overpayment Notice, but instead the "the date that the ESS [agency] became aware of the potential that an overissuance may exist." In this case, the agency became aware of a potential for an overissuance in January, 2014; the alleged overpayment period falls within the 12 month period preceding respondent's discovery of the overpayment.

When a household receives more FS than it was entitled to receive, it must be recovered by the agency. *FoodShare Wisconsin Handbook*, 7.3.1.9. Here, the alleged overpayment sought by the agency occurred 4 months prior to the discovery date, so either recovery method is clearly appropriate under law.

The respondent's notice of the overpayment was sent to the petitioner on February 7, 2014, and specified that the overissuance was caused by petitioner's error in failing to report earned income. The petitioner testified at hearing that she and her husband always provided the information that the respondent requested. Indeed, it appears that the confusion that led to the error in this case was as much the fault of respondent's worker as it was petitioner's. The worker processed employment stubs labeled "last check" provided by petitioner, and presumed that the label signified that petitioner's employment and her husband's employment had ended. Petitioner credibly testified that she had been instructed to label the checks thusly, and understood that the aim of the label was to identify the last of the check stubs for herself and her husband.

Despite my conclusion that the error here resulted from a misunderstanding for which both parties share blame, FS policy requires that an overpayment be collected regardless of fault. 7 C.F.R. § 273.18(b); see also, *FoodShare Wisconsin Handbook*, 7.3.1.9. Simply put, petitioner's household earned income was not properly budgeted, which resulted in petitioner's receipt of more FS benefits than should have been

issued. I have reviewed the respondent's calculations and have found no error. Further, I note that the petitioner has not alleged any computational error on the part of the respondent.

### CONCLUSIONS OF LAW

The respondent correctly determined that the petitioner must repay a \$1,034.00 overpayment of FoodShare that occurred from September, 2013, through November, 2013.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 18th day of April, 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 April 18, 2014.

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