FH
[redacted]

# STATE OF WISCONSIN
## Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION
[redacted]
FOP/156327

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 26, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on August 07, 2014, at Oshkosh, Wisconsin. At the request of petitioner, hearings set for May 5, 2014 and May 28, 2014 were rescheduled. At the request of the parties, the record was held open for consecutive briefs by the parties to the Division of Hearings and Appeals (DHA). Both parties timely submitted their briefs to DHA which are received into the hearing record.

The issue for determination is whether the county agency is correctly seeking recovery of FoodShare (FS) overpayments to the petitioner during the total period of March 7, 2011 to October 31, 2013 in the total amount of $15,224.00, due to petitioner's failure to timely report accurate household composition (her husband in her home), and her failure/refusal to report or timely verify her husband's earned income to establish that her FS household's income was below the FS income eligibility limit during the entire FS overpayment period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Attorney Mary Anne Mueller
Winnebago County Office of Corporation Counsel
448 Algoma Boulevard
P.O. Box 2808
Oshkosh, WI 54903-2808

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Winnebago County who resides with her husband, [redacted], and their three daughters. Ex. A.
2. The petitioner was and continues to be married to her husband, [redacted], during the entire FoodShare (FS) overpayment period of March 7, 2011 to October 31, 2013. Ex. A.
3. The county agency established with reliable evidence that petitioner's husband resided with the petitioner at [redacted] in [redacted], during the entire FS overpayment period of March 7, 2011 to October 31, 2013.
4. The petitioner applied for FS benefits on March 7, 2011, and in that application petitioner falsely failed to report that her husband resides with her in her household and his earned income. Ex. B. During the hearing, petitioner admitted that she lied on that March 7, 2011 FS application, and also admitted she failed to report her husband in the home on any required "change report" or renewal application to the county agency during the overpayment period.
5. The petitioner was approved for FS benefits for a household of four (without her husband). The petitioner received FS benefits during the entire period of March 7, 2011 through October 31, 2013 for a FS household of five. She received FS benefits of $6,699 from March 7, 2011 through February 29, 2012; received FS benefits of $5,056 from March 1, 2012 through February 28, 2012; and then she received $3,479 in FS from March 1, 2013 through October 31, 2013 for the total amount of $15,224.00.
6. During her six month reviews and renewal applications after her March, 2011 FS application, petitioner continued to falsely state that her husband did not reside with her and failed to report her husband's earned income or self-employment income. Ex. C and D
7. The county agency discovered that [redacted] has been employed by Outagamie County as a Highway Department mechanic since 1995. His annual income since 2011 has been about $52,000. Petitioner failed to report her husband's earned income to the county agency during the relevant period of time for the total FS overpayment period of March 7, 2011 to October 31, 2013.
8. The petitioner and her husband had a self-employment business income to the county agency.
9. The county agency sent an October 16, 2013 Notice of Proof Needed to the petitioner requesting verification by October 26, 2013 of her husband's earned income from Outagamie County as a mechanic, and their self-employment business from Grandpa [redacted]'s Pure Maple Syrup during the FS overpayment period in question. Ex. N. During the hearing, petitioner admitted that she failed and refused to provide that required financial verification to the county agency.
10. On December 13, 2013, the county agency sent written Notification of FS Overissuance to petitioner informing that during the period of March 7, 2011 to October 31, 2013 she was issued a FS overpayments in the total amount of $15,224.00, due to petitioner's failure to timely report accurate household composition (her husband in her home) and his earned income and their self-employment income due to client error resulting in the presumption that the household was above the FS income eligibility limits.
11. The county agency determined that the petitioner's FS benefits during the period of March 7, 2011 to October 31, 2013 was a total overpayment because petitioner failed/refused to report her husband in her home and correct household income on her initial FS application, and continued to refuse to provide reliable verification and documentation to accurately determine petitioner's household's income eligibility and benefits for the entire FS overpayment period of March, 2011 through October, 2013.

12. The petitioner has not made any payments towards her FS overpayment, and thus the remaining FS overpayment is $15,224 as of the August 7, 2014 hearing date.

## DISCUSSION

All FS applicants and recipients have a duty to accurately and truthfully report income to the county agency. 7 C.F.R. §273.12, "Reporting requirements." Furthermore, a FS recipient has the duty to cooperate in providing accurate and true income information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS eligibility and benefits. 7 C.F.R. §273.2(d), "Household cooperation." As explained in the above Findings of Fact, petitioner failed and refused to accurately and truthfully report her household composition or household income, and refused to cooperate with the county agency in reliably verifying her household's income was below the FS income limit for a household of five per FoodShare Handbook, 8.1.1.1, "Income limits."

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2)(emphasis added).

Those regulations also provide, in relevant part, as follows:

> (a) Establishing claims against households. **All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household.** The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18. The FS Handbook similarly provides that an adult is a person who is 18 years old or older and a member of the food unit at the time the overpayment occurred is liable for repayment of any overissued FS benefits. FS Handbook § 7.3.1.2. All nonexempt income must be budgeted in determining FS. 7 C.F.R. § 273.9(b). As a result, petitioner and her husband were jointly and severally liable for this FS overpayment.

In this case, the county agency's counsel, Attorney Mary Anne Mueller and her convincing witnesses established a strong case (proven by more than the preponderance of the evidence) that the county agency was correctly seeking recovery of the total FS overpayment to the petitioner which was due entirely to client error. During the August 7, 2014 hearing, the petitioner admitted that she and her husband failed to provide documentation to the county agency regarding their earned income from the time of her initial March 7, 2011 FS application. Furthermore, petitioner provided no good cause for such failure or refusal. The county representatives presented clear evidence that despite multiple income verification requests, petitioner failed or refused to provide reliable evidence in order for the county agency to determine her FS income eligibility during the entire March, 2011 through October, 2013 overpayment period. The petitioner admitted that she made false statements in her initial March 7, 2011 FS application because in that application she failed to report her husband was in her home and his earned income. As a result, the county agency based upon false information found the petitioner's household income eligible for FS benefits

During the hearing and in her written closing submission while the record was held open, petitioner attempted to offer weak, unpersuasive excuses for why she lied on her FS applications and refused to timely submit required accurate information and verification to the county agency. Basically, petitioner

was requesting that she be forgiven for her ongoing failures and refusals to provide accurate household composition and household income information to the county agency despite her awareness that such actions were improper. Petitioner's arguments have no merit. As petitioner refused to provide reliable household composition and income verification for her husband and herself, the county agency had no choice but to consider the full amount of her FS benefits to be an overpayment based upon the assumption that petitioner's household was above the FS income eligibility limit for the entire FS overpayment period. Moreover, in her written closing argument, Attorney Mueller presented convincing arguments for why the county agency was correctly pursuing the total FS overpayments against the petitioner.

The hearing record is clear that petitioner by her actions has refused to provide the repeatedly requested verification which she falsely omitted from the time of her March 7, 2011 initial FS application. There is a negative inference that can be taken that if a party refuses to provide required, relevant information, it can be presumed that such evidence will have a negative impact on that party's case. In this case, given the unusual circumstances of this case, there is no alternative but to conclude that the petitioner's total household income was above the FS income eligibility limit for s household of five for the entire FS overpayment period of March 7, 2011 through October 31, 2013.

The petitioner did not contest that her FS household of five had received FS benefits during the period of March 7, 2011 through October 31, 2013. Furthermore, the petitioner was unable to offer any reliable evidence to refute the county agency's FS overpayment case. Nevertheless, petitioner contended that it was unfair that the county agency was seeking to recover the FS overpayment. However, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . . " 7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Accordingly, for the above reasons, I conclude that the county agency is correctly seeking recovery of FoodShare (FS) overpayments to the petitioner during the total period of March 7, 2011 to October 31, 2013 in the total amount of $15,224.00, due to petitioner's failure to timely report accurate household composition (her husband in her home), and her failure/refusal to timely verify her husband's earned income and their self-employment income which should have been included in her FS eligibility and benefit determinations.

## CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of FoodShare (FS) overpayments to the petitioner during the total period of March 7, 2011 to October 31, 2013 in the total amount of $15,224.00, due to petitioner's failure to timely report accurate household composition (her husband in her home), and her failure/refusal to timely verify her husband's earned and their self-employment income to establish that her FS household's income was below the FS income eligibility limit during the entire FS overpayment period.

**THEREFORE, it is** **ORDERED**

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 3rd day of October, 2014

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\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals

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The preceding decision was sent to the following parties on October 3, 2014.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney Mary Mueller