



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/156425

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 31, 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 hearing was held on April 22, 2014, by telephone. The hearing record was held open for 7 days for submission of additional documentation.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid FS from August 14, 2012 through January 31, 2013.

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: Leslie Vosters, Fair Hearing Coordr.  
Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is now a resident of Green Lake County.

2. The petitioner received FS as a household consisting of herself, her child, and two of her husband's children (but not her husband) from at least August 14, 2012, through January 2013. The agency added the husband to her case effective February 1, 2013, at which time the case closed due to excess income.
3. The petitioner's husband, [REDACTED], received FS from August 2012 through January 2013 as a homeless household that did not include the petitioner.
4. On January 13, 2014, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$1,524 in FS for the 8/14/11 – 1/31/13 period (claim # [REDACTED]). Exhibit 1. The overpayment was due to client error. Mr. [REDACTED] was also listed as a liable party.
5. The petitioner, her husband, and their children lived together at her sister's residence, [REDACTED], Wisconsin, from August 14, 2012 through January 31, 2013. Before moving to [REDACTED], the petitioner and her children lived with Mr. [REDACTED] in [REDACTED].
6. Mr. [REDACTED] was employed by [REDACTED] during the overpayment period. He made child support payments for two children (not his child in common with the petitioner) during the period. He reported to the Department that he was making support payments of \$444 monthly, as evidenced by the "Bills" section of his FS case notices.
7. The petitioner's testimony was not credible.

## 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 8/14/12 – 1/31/13 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 and her children did not live with her husband at any time during the overpayment period. Alternatively, she asserted that if her husband was to be included in her household, he should have been given credit for paying out child support, which she was confident that he had paid every week. The petitioner's husband did not testify.

The agency retained a private contractor to investigate the petitioner's household status. The investigator testified to interviewing the petitioner's sister in December 2012, at which time the sister stated that the petitioner and the children had been residing with her for about a month. Three neighbors told the investigator that the petitioner, her children, and her adult male companion had been living together at [REDACTED] since at least the late summer of 2012. See, Exhibits 1, 2. Further, the investigator testified that she interviewed the petitioner on December 15, 2012. In that interview, the petitioner first claimed that neither she nor Mr. [REDACTED] were living at [REDACTED]. After being told that her sister had acknowledged that the petitioner was living there, the petitioner began yelling and stated that the investigator could send law enforcement to the household to take her children to her brother's house. Following more unpleasantness from the petitioner, the petitioner ended the interview. At hearing, the petitioner testified that she shifted about between various friends' houses in August and into September 2012, because she did not like her sister's boyfriend. The sister's boyfriend was incarcerated in late September, so the petitioner admits that she began spending more time (4 nights weekly) at her sister's residence from that point forward.

At hearing, the petitioner was also asked to identify where her husband was living, if he was not living with her. She testified that he lived with various friends and relatives (addresses unspecified). Because he is required to be on a sex offender registry, she believes that at one point during the overpayment period he identified a friend's address of [REDACTED] to the registry. She supplied no verification of this assertion for the hearing record.

The self-serving testimony of the petitioner was not credible. She supplied no documentation to corroborate her unlikely tale. The neighbors interviewed by the investigator, and the investigator herself have no motive to be untruthful. Also, parts of the petitioner's testimony were inherently contradictory. For instance, she claimed to be paying a \$600 monthly rent expense (landlord not specified) when she applied for FS in August 2012. At hearing, she asked why she was not given a shelter expense deduction in the latter months of the overpayment period. Later in the hearing, she testified that she had been

moving around between various locations during the overpayment period, and that she was paying her hosts \$20 to \$30 “here and there.” That testimony is at odds with her assertion of a \$600 rent expense in the application, and is at odds with her questioning of the adequacy of an excess shelter cost deduction in the later months of the overpayment calculation. It is also difficult to understand how the petitioner could have paid \$600 in rent on her reported income of \$654 (all child support for two of her children) at the time of application.

The petitioner also complained that her husband’s outgoing child support payments to his other children (not their child in common, for whom he was not paying support) should have been subtracted from his income in the overpayment calculation. A state child support database print was supplied by the agency post-hearing. It shows that the husband was not paying support for his child in common with the petitioner from August through December 2012. It also shows that he was paying support for two other children (██████████ and ██████████) totaling \$814 for August, \$995 for September, \$788 for October, \$876 for November, \$700 for December, and \$876 for January. On his separate FS application, the husband reported paying out \$444 monthly in child support. Thus, the maximum support amount that could be subtracted from his income is the \$444 expense that he declared, per policy. Department policy for overpayment calculation instructs the agency as follows:

**Client Error**

...

In overissuance calculations, do not apply the 20% earned income disregard to earned income that was required to be reported but was not reported timely. ... If expenses were reported correctly at the time of the overissuance, use those same expenses when calculating the overissuance. If not, then do not use the expenses in the calculation.

*FSWH*, § 7.3.2.1. The overpayment worksheet supplied in this case appears to show that the Department counted the support paid by the husband for the children V.C. and D.C. as unearned income, while the support reported (\$444) and paid for them by the husband was not subtracted under “child support paid.” This treatment of the child support appears to be contrary to the *FSWH* instruction. Thus, the agency should redetermine the overpayment amount by subtracting the reported child support expense.

**CONCLUSIONS OF LAW**

1. The petitioner was overpaid FS from August 14, 2012 through January 31, 2013, because she did not correctly report her household composition and income during this period.
2. The Department correctly determined the petitioner’s shelter expense deduction for the overpayment period.
3. The Department incorrectly determined the amount of the petitioner’s combined household’s net income by failing to subtract reported child support paid out.
4. The Department may pursue recovery of the overpayment, after reviewing the calculation in accord with Conclusion of Law #3.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the Department with instructions to redetermine the amount of the FS overpayment, in accord with Conclusion of Law #3. This action shall be taken within 10 days of the date of this Decision. 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 29th day of May, 2014

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 29, 2014.

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