



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/157040

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 22, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to overpaid FoodShare benefits (FS), a hearing was held on June 3, 2014, by telephone.

The issue for determination is whether the petitioner was overpaid FS from April 1, 2013 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: Sherrie Johnson, specialist-OIG  
Public Assistance Collection Unit  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The petitioner received FS from at least April 1, 2012, through January 31, 2013.

3. On March 6, 2014, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$1,110.00 in FS for the 4/1/12 – 1/31/13 period (claim # [REDACTED]). Exhibit I. The overpayment was due to client error.
4. Throughout the overpayment period, the petitioner reported to the Department that her income consisted solely of disability payments from the Social Security Administration. This level of income caused her to be eligible for FS.
5. From at least March 2012 through at least January 31, 2013, the petitioner operated [REDACTED]. While operating the child day care, she received child care benefit payments as a provider from the Wisconsin Shares child care subsidy program. See, Exhibit G. She did not report the Wisconsin Shares payments to the Department during the overpayment period.
6. When the Wisconsin Shares payments were added to the petitioner's other income, she was overpaid FS during the period in the amount of \$1,110.

### 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 time limit, however, for how far back in time the agency may go if the overpayment was due to agency error.

## II. THE PETITIONER WAS OVERPAID FS FOR THE 4/1/12 – 1/31/13 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's income is in dispute. The petitioner does not deny that she operating a daycare during most of the overpayment period. Rather, the petitioner explained that she thought the Department knew about the daycare because she took children into care who were referred from the local county human services department. That explanation did not satisfy her duty to timely report income to the Department, which is reiterated in nearly every notice that the Department sends to recipients. The Department is not a mind-reader. The petitioner also claimed that at the time of her periodic review (7/26/2012), she had no children in care, so it did not occur to her to report the Wisconsin Shares payments as income. However, Wisconsin Shares checks were issued to her as follows, near the date of that review: \$312.72 on June 30, 2012, \$451.35 on July 14, 2012, \$357.78 on July 28, 2012, \$343.34 on August 11, 2012, and \$220.60 on August 25, 2012.

The petitioner's assertions and testimony are not credible. She was overpaid as alleged.

### **CONCLUSIONS OF LAW**

1. The petitioner was overpaid \$1,110 FS from April 2012 through January 31, 2013, due to client error.
2. The Department is correctly pursuing recovery of that overpayment, pursuant to federal law.

**THEREFORE, it is**

**ORDERED**

That 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 5th day of June, 2014

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\sNancy J. Gagnon  
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 June 5, 2014.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability