



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/157079

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 23, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Lincoln County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on June 17, 2014, by telephone. A hearing set for May 14, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner was overpaid FS for the November 2011 through October 2013 period.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
1103A Harrison St  
Merrill, WI 54452

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Beulah Garcia, Resolution Coordinator  
Northern IM Consortium

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Lincoln County.
2. The petitioner received FS as a household of two persons from at least October 2011 through October 2013.

3. On March 20, 2014, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$6,775 in FS for the 11/1/11 – 10/31/13 period (claims # [REDACTED], [REDACTED]). Exhibit 4. The overpayment was due to client error.
4. The petitioner divorced B. [REDACTED] in October 2011. Thereafter, she received FS as a household of two (self & child). She did not report receipt of income from her parents or ex-husband until her October 2013 case review. The amount of budgeted unearned income throughout the above period was zero; as a result she received the maximum FS allotment for two of \$367 every month.
5. The petitioner and her child resided with the petitioner's parents in Merrill from August 2011 to September 2012. Her parents gave her \$300 every six months (*i.e.*, an average of \$50 monthly).
6. The petitioner currently resides with a friend, to whom she does not pay rent.
7. The petitioners' ex-husband has not been ordered to pay child support. He was represented by counsel in the divorce; the petitioner was unrepresented. The terms of the divorce judgment, captured in a Marital Settlement Agreement, call for the ex-husband to pay for expenses of the child up to \$50 monthly. Exhibit 5, Agreement, p.4. The petitioner's ex-husband has regularly made these payments.

## 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. The Department must prove, by a preponderance of the credible evidence, that the overpayment occurred and has been calculated correctly.

## II. INCOME FOR THE 11/1/11 – 10/31/13 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the lack of any earned income for petitioner is in dispute. The dispute is over the amount of the petitioner's gifted income.

Based on the petitioner's comments at an October 2013 review, the Department investigated and concluded that the petitioner received an average \$250 monthly from her parents, and \$1,000 monthly from her ex-husband. No documentation exists that accounts for the amounts of these gifts. FS rules require the counting of cash gifts exceeding \$30 per quarter.

At hearing, the petitioner admitted receiving such gifts, but denied the amounts. She produced a written statement from her mother that clarified the amount of the parents' gifts. The misunderstanding around the amount of the parents' gifts was understandable, and the petitioner's assertion that the parental gifts average \$50 monthly was credible.

The more difficult factual assertion was the amount of the ex-husband's payments. The petitioner told the agency in October 2013 that her ex-husband had been giving her between \$800 - \$1,200 monthly. She gave no estimate of the amounts when interviewed by an O'Brien & Associates investigator. She kept no paper records of his gifting. At hearing, she testified that the ex-husband gave her only "nominal" amounts of money for their child's expenses. The petitioner's varying accounts do not make her testimony very credible. However, she did submit a notarized statement from her ex-husband, in which he declares that he did not give her \$700-\$1200 monthly. He further states that he gave her a "nominal amount" of money for their child's expense. The submitted document that ultimately persuaded me that the petitioner receives inexplicably small amounts of money from her ex-husband is their Marital Settlement Agreement. The Agreement directs the ex-husband to pay the petitioner up to \$50 monthly towards their child's expenses. I therefore conclude that \$50 monthly is what the father is paying the petitioner.

Accordingly, I will remand this case to the agency to redetermine the amount of the petitioner's overpayment. In making that redetermination, the agency shall budget unearned income of \$100 monthly (\$50 from parents, \$50 from ex). The agency shall delete the \$1,250 income figure that it had inserted in the overpayment calculation.

### CONCLUSIONS OF LAW

1. The petitioner had unearned income of \$100 throughout the overpayment period identified above.

2. Contrary to the agency's overpayment determination, the petitioner did not receive \$1,250 in gifted funds monthly. Thus, a redetermination is necessary.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the Department with instructions to re-determine the amount of the petitioner's overpayment, if any, for the November 2011 through October 2013 period, in accord with the Conclusions of Law above. This action shall be taken within 10 days of the date of this Decision.

**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 30th 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**

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 June 30, 2014.

Lincoln County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability