



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/157097

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 22, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Sawyer County Human Services in regard to an overpayment of FoodShare benefits (FS), a telephonic hearing was held on May 20, 2014.

The issues for determination are whether petitioner is entitled to a rehearing and whether this administrative law judge is precluded from reviewing the petitioner's appeal because she has had a prior hearing on the merits of the same claim.

There appeared at that time and place 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: Beulah Garcia  
Sawyer County Human Services  
10610 Main Street  
PO Box 730  
Hayward, WI 54843

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On or about December 14, 2013 the agency sent petitioner a notice stating that she was overpaid FS.
3. Petitioner appealed that action and a hearing was held on March 20, 2014.
4. On April 1, 2014 the Division of Hearings and Appeals (DHA) by Administrative Law Judge O'Brien issued a Final Decision from petitioner's hearing finding that the agency correctly determined that petitioner was overpaid FS. The matter was remanded however to ensure that the agency reduced the FS overpayment from \$12,124 to \$3912 as the agency conceded that was the amount overpaid. See DHA Decision No. FOP/155080.
5. The petitioner did not timely request a rehearing from the DHA.
6. On April 22, 2014 the petitioner filed a letter with the DHA stating she was appealing the FS overpayment which was the subject of DHA Decision No. FOP/155080. That is the subject of this decision.

### DISCUSSION

1. Is the petitioner entitled to a rehearing?

Wisconsin Statute §227.49 allows for rehearings in contested cases. As explained in DHA Decision No. FOP/155080, if this petitioner thought *that* decision was based on a serious mistake in the facts or the law, she could request a rehearing. She could have also asked for a rehearing if she had found new evidence which would change the decision. Her request must have explained what mistake the Administrative Law Judge made and why it is important, or she needed to describe the new evidence and explain why she did not have it at her first hearing. If those things are not explained, the request will have to be denied. Also, as explained in DHA Decision No. FOP/155080, to ask for a rehearing, she needed to send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875, and that the request must be received no later than 20 days after the date of the decision, as late requests cannot be granted. Petitioner's letter, postmarked as of April 22, neither explained any a serious mistake in the facts or the law, nor was filed timely. Thus, she is not entitled to a rehearing. The April 22 letter should have resulted in a denial letter for a rehearing from the Division of Hearings and Appeals, however, due to administrative error, it was treated as a new appeal and therefore Case No. FOP/157097 was created, and the instant appeal was heard on May 20, 2014. That leads us to the discussion below.

2. Whether this administrative law judge is precluded from reviewing the petitioner's appeal because she has had a prior hearing on the merits of the same claim?

First, there is no evidence that petitioner was provided with any appeal rights per a negative notice resulting from No. FOP/155080. Accordingly, there is no jurisdiction to hear the matter on that ground. Regardless, the instant hearing was set and held in error, and therefore I provide the following for petitioner's information.

Claim preclusion (formerly known as *res judicata*) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as *collateral estoppel*) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to

draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." Ibid., p. 550.

Petitioner's testimony in the instant hearing was that for a variety of reasons, she was not able to attend the previous hearing in No. FOP/155080, and that she was still alleging the same information provided at that hearing – that she and her boyfriend were not living together. However, the petitioner has had her "day in court" on the merits of her appeal about the FS overpayment. The legal doctrine of "claim preclusion" bars her attempt for a second "kick at the cat" here. The instant petition must be dismissed.

### **CONCLUSIONS OF LAW**

1. Petitioner is not entitled to a rehearing from Decision No. FOP/155080.
2. Jurisdiction is not present to reach the merits; the petitioner has had prior final judgment from the Department in DHA Decision No. FOP/155080, and the instant appeal claim is therefore precluded under the operation of Wisconsin case law.

**THEREFORE, it is**

**ORDERED**

That the petitioner's appeal herein be, and the same hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 29th day of May, 2014

---

\sKelly Cochrane  
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 May 29, 2014.

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