



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/157565

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 13, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Trempealeau County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on June 12, 2014, by telephone.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid FS for the November 2012 through May 2013 period.

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: Tom Miller, ES Supr.  
WREA IM Consortium

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Crawford County.
2. The petitioner received FS as a household of five persons (self, husband and 3 children) from at least September 2012 through May, 2013.
3. On April 10, 2013, a *Notification of FS Overissuance* and worksheets were sent to the petitioner, advising that she had been overpaid \$3,252 in FS for the 11/1/12 – 5/31/13 period (claim

# [REDACTED]. The overpayment amount was then corrected to \$2,778. Exhibit 1. The overpayment was due to client error.

4. On September 4, 2012, the petitioner reported that her spouse changed jobs and had begun working at [REDACTED] [REDACTED] in August 2012. She reported that he was working 40 hours weekly at \$10.44 per hour; no bonus/incentive income was reported. On September 20, 2012, the Department mailed a notice to the petitioner advising of her updated FS benefit amount (based on his \$1,925 monthly income), and also advising that she should report an income change if household income exceeded \$2,250.83 monthly.
5. On November 16, 2012, the petitioner performed a telephonic periodic case review with the agency. She indicated that the spouse's income was the same. A follow-up notice was issued by the Department, indicating that the spouse's income had been reported as \$1,962.50 monthly.
6. In May 2013, the petitioner finally reported higher income, and her FS were reduced.
7. In April 2014, the agency received a state wage cross-match that showed that the spouse's earnings averaged \$2,882.00 monthly from September 2012 through May 2013. That income exceeded the reporting threshold in all of those months, and caused the household to be overpaid in all of those months. The overpayment was \$402 for September, and \$396 in the subsequent months.

## 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.

## II. THE PETITIONER WAS OVERPAID FS FOR THE 11/1/12 – 5/31/13 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's income is in dispute. Rather, the petitioner explained that she thought she had provided all requested information to the agency. Specifically, she did supply the spouse's correct hourly base wage.

However, the employer paid the spouse piece-work bonuses that varied based on the amount of work available. These bonuses were variable. However, the petitioner should have realized that the bonuses were taking the household over the \$2,250 reporting threshold on a regular basis. Also, if she had told the agency about the variable bonuses, the agency could have done a multi-month earnings average to arrive at a more accurate FS budget number. However, the petitioner did not do this.

The petitioner produced no documentation or other evidence to establish that the Department's income figures are wrong. I conclude that the petitioner was overpaid as alleged, and that she failed to report the household's increased income.

### CONCLUSIONS OF LAW

1. The petitioner was overpaid \$2,778 FS from November 2012 through May 2013, due to client error.
2. The county agency 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 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**

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The preceding decision was sent to the following parties on June 30, 2014.

Trempealeau County Department of Soc Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability