



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/158081

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 3, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on July 9, 2014, by telephone.

The issue for determination is whether the petitioner was overpaid FS during the September 2013 through May 2014 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: Kristine DeBlare, IRS/PARIS agent  
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 Milwaukee County.
2. The petitioner received FS from at least September 2013 through May 2014. During that period, she claimed that her nephew, [REDACTED] [REDACTED] (CL), age 12, was residing with her in

Milwaukee, Wisconsin. His presence in her household increased her FS household size from one to two persons.

3. CL's mother, [REDACTED] began claiming him as a member of her household in [REDACTED] in July 2013. Thus, duplicate FS benefits were issued for CL by both [REDACTED] and Wisconsin from September 2013 onward.
4. CL resided with the petitioner from September through November 2013. He did not reside with the petitioner in December 2013, or for January through May 2014.
5. On May 12, 2014, the Department issued *FoodShare Overpayment Notice(s)* and worksheets to the petitioner. The *Notice* advised that the petitioner had been overpaid FS totaling \$1,181.00 for the September 1, 2013 through May 31, 2014 period. The stated basis for overpayment was "client error- failure to report accurate household members."

## 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 overpayment in this case was not caused by agency error; CL's mother and the petitioner were not accurate in reporting his whereabouts to their respective agencies.

## II. THE 9/1/13 – 5/31/14 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 her nephew was residing with her throughout the overpayment period, subject to a few brief appearances by his mother.

CL was present at hearing and testified that he lived with the petitioner in Wisconsin from mid-August through November 2013, but then lived with his mother from December 2013 into May 2013. Post-hearing, the petitioner supplied verification of CL's school attendance in Milwaukee from September through November 2013. This evidence caused me to apportion the child's residency as stated in Finding #4.

Notwithstanding this clarifying evidence, the Department argued that the entire overpayment recovery against the petitioner was still valid. The Department representative pointed to Department policy at *FSWH*, § 3.4.1, which forbids duplicate issuance of benefits. The policy correctly states that a person cannot be a member of more than one FS unit at a time. It is absolutely true that CL could not be in a FS group in [REDACTED] and Wisconsin at the same time. Obviously, the payment by one of the two states is an overpayment in each duplicate month. Because the child's benefits had already been issued for August at the time the petitioner asked to have him added to her case in mid-August, Wisconsin correctly did not issue Wisconsin benefits for him for August.

Beginning with September 2013, [REDACTED] became the state of incorrect issuance because CL was not residing in [REDACTED]. The federal rule declares:

### **§273.3 Residency.**

(a) *A household shall live in the State in which it files an application for participation. ... No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in §271.2 and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with §273.11(g). The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. [emphasis added]*

7 C.F.R. § 273.3(a). Thus, recovery for the September through November 2013 duplicate benefits should be taken against the head of FS household in [REDACTED] (presumably, [REDACTED]).

## **CONCLUSIONS OF LAW**

1. The petitioner was overpaid FS from December, 2013 through May 31, 2014, due to client error.
2. The petitioner was not overpaid FS from September 1, 2013 through November 30, 2013.

3. Incorrect/duplicate FS benefits were paid for CL by the State of [REDACTED] to a different FS household for September 2013 through November 2013.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the Department with instructions to reduce the amount of the FS overpayment by removing the overpayment amounts for September through November 2013 from the total FS overpayment calculation. 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 28th day of July, 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 July 28, 2014.

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