



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION  
[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 07, 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 telephonic hearing was held on August 11, 2014, at Lancaster, Wisconsin. At the request of the parties, the record was held open for the submission of written closing arguments to the Division of Hearings and Appeals (DHA). The Department timely submitted its closing argument by Interstate agent, Kristine DeBlare, to DHA and petitioner which is received into the hearing record. However, petitioner did not timely submit any closing argument to DHA.

The issue for determination is whether the county agency correctly determined that the petitioner was overissued \$378.00 of Wisconsin FoodShare benefits during June, 2014, due to the issuance of duplicate benefits in the State of Maryland pertaining to petitioner's grandchildren.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Megan Ryan, Interstate fraud agent  
Public Assistance Collection Unit  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Grant County who resides with her four grandchildren.
2. Petitioner receives FoodShare (FS) benefits for a FS household of five (petitioner and her four grandchildren).
3. Petitioner's grandchildren were included on their mother's (petitioner's daughter - [REDACTED] [REDACTED]'s) FoodShare group in the state of Maryland for a period of at least during June, 2014.
4. On June 9, 2014, the Department became aware through the Public Assistance Reporting Information System (PARIS) that petitioner's grandchildren were included in petitioner's Wisconsin FS household during June, 2014 at the same time that her grandchildren were included in their mother's Maryland FS household during June, 2014.
5. The county agency sent a June 19, 2014 FoodShare (FS) Overpayment Notice to the petitioner stating that she had been overissued \$378 of FS due to FS issuance to petitioner's reporting of her grandchildren in her Wisconsin FS household, while they were simultaneously included in their mother's (petitioner's daughter's) Maryland FS household (duplicate FS benefits with another state due to non-client error). See Exhibit 1. As a result, petitioner had a FS household of one (not five) during June, 2014.
6. The petitioner filed an appeal with the Division of Hearings & Appeals on July 7, 2014, contesting her liability for the overpayment.

### DISCUSSION

If a FS overpayment occurred during the time in question, the agency must make an effort to recover it, regardless of who was at fault in creating the overpayment. An FS overpayment is defined as:

(a) Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive...

See, 7 C.F.R. §273.18(a). Thus, even if an FS agency in either Wisconsin or Maryland was the cause of the overpayment, the petitioner must still repay it. The agency believes that an overpayment occurred here because the petitioner's grandchildren received FS as part of a Maryland FS household even after they relocated to Wisconsin. The applicable regulation can be found at 7 CFR §273.3(a) and the *FoodShare Wisconsin Handbook* § 3.4.1, which states:

A person cannot be a member of more than 1 food unit and 1 *FS* group in the same month except residents of shelters for battered women and children.

Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits. States typically issue benefits on either a calendar or fiscal month. A fiscal month cycle provides benefits from a date in one month to a corresponding date in the next month. California (Fresno), Massachusetts, Nevada and South Dakota issue on a fiscal month cycle. Illinois issues benefits by calendar month (first day through the last day of the month) and by fiscal month (16<sup>th</sup> through 15<sup>th</sup>). Wisconsin issues on a calendar month cycle.

In any Fair Hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case. This applies when the action is based on proving that a person was overpaid FS. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the county agency's evidence of correct action by the county agency in determining the negative action was required.

The petitioner does not contest the calculation of the overpayment, but instead attacks the respondent's determination that she is liable for the overpayment. In short, she argues that (1) she never authorized her daughter (mother of her grandchildren) to collect FS for her grandchildren, (2) she never knew that her grandchildren were recipients of FS in Maryland, and (3) her daughter should have been responsible for reporting that her children were no longer residing with her in Maryland. I found petitioner's testimony to generally be credible. However, petitioner did not submit to DHA any responsive to the Department's closing argument.

The Department asserted its bases for the overpayment in simple terms. The petitioner's grandchildren received duplicate benefits from another state, and therefore an overpayment was created. The Department established that petitioner's grandchildren were included in their mother's Maryland FS household during at least June, 2014.

While I certainly understand petitioner's argument that she should not be held liable, the focus of her argument is misplaced. Petitioner's testimony indicates that her grandchildren's mother may have perpetrated a fraud in knowingly receiving FS benefits for petitioner's grandchildren even after they no longer resided with her in Maryland. While petitioner may be justified in her anger toward her daughter, that does not equate to error on the part of the Department in establishing this overpayment. As noted previously, FS overpayments must be recovered regardless of who is at fault. The petitioner has not identified any error by the respondent, nor has she identified any statute or regulation that would relieve her of liability here.

The petitioner has in effect argued that the FS program standard is unfair and that the Administrative Law Judge (ALJ) should grant her relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she is liable for the overpayment. No exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

The agency has established a prima facie case showing that the petitioner was overpaid by Wisconsin while her four grandchildren were receiving FS from Maryland. The petitioner has failed to credibly rebut this showing. The FS overpayment determination must be sustained under these facts.

### **CONCLUSIONS OF LAW**

1. The petitioner's grandchildren were ineligible for Wisconsin FS during the month of June, 2014 that they were receiving FS from Maryland.
2. The petitioner received an overpayment of FS in Wisconsin in the amount of \$378.00 for the month of June, 2014.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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**

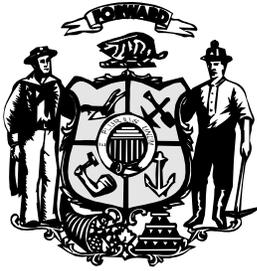
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 September, 2014

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\sGary M. Wolkstein  
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 September 5, 2014.

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