



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/159729

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 08, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on September 03, 2014, at Janesville, Wisconsin.

The issue for determination is whether the county agency is correctly seeking repayment of a FoodShare (FS) overpayment of \$367 for the month of June, 2014, due to the petitioner residing in [REDACTED] for three months while still receiving FS benefits from the State of Wisconsin.

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: Melissa Genz, ES Supervisor  
Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 20 year old resident of Rock County who has two minor children.

2. The petitioner received FoodShare (FS) benefits for a household of four (petitioner, her two children and her mother, [REDACTED]).
3. The petitioner failed to timely report to the county agency that she moved out of state to [REDACTED] at the address of [REDACTED], [REDACTED] on or about March 17, 2014. See Exhibit 6.
4. On June 9, 2014, the Rock County Child Support agency discovered that petitioner has been residing in the State of [REDACTED] for the past three months, and her two children had been residing in Wisconsin with their grandparents or with their father.
5. The county agency sent a July 17, 2014 FoodShare (FS) Overpayment Notice to the petitioner stating that she received an overpayment of \$367 for the month of June, 2014, due to her failure to timely report to the agency that she moved out of state to [REDACTED] for three months and thus did not reside in Wisconsin to be eligible for FS benefits from Wisconsin during the month of June, 2014. Exhibit 4.
6. The county agency correctly asserted that petitioner was not eligible for FS as “temporarily absent” from her Wisconsin FS household because her absence was longer than 2 full consecutive calendar months past the month of departure as required by FoodShare Handbook, 3.2.1.2.

### DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Those regulations also provide, in relevant part, as follows:

- (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 . . .

7 CFR § 273.18. The FS Handbook similarly provides that an adult is a person who is 18 years old or older and a member of the food unit at the time the overpayment occurred is liable for repayment of any overissued FS benefits. FS Handbook § 7.3.1.2. All nonexempt income must be budgeted in determining FS. 7 C.F.R. § 273.9(b). Thus the county agency is correctly pursuing this June, 2014 FS overpayment against the petitioner and her mother who were both in the same FS household.

Applicants for FoodShare benefits must reside in, or be temporarily absent from Wisconsin. 7 CFR §273.3; *FS Handbook* §3.2.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. In this case, on June 9, 2014, the county agency discovered from the Rock County child support agency that petitioner had failed to timely notify the county agency that she been residing in the State of [REDACTED] for the past three months, and her two children had been residing in Wisconsin with their grandparents. During the September 3, 2014 hearing, petitioner admitted that she had resided as of March 17, 2014 for three months in [REDACTED].

The agency applied the FS temporary absence policy to petitioner’s case. It provides that the agency should:

- Include in the household an individual temporarily absent from the household when the expected absence is **no longer than 2 full consecutive calendar months past the month**

**of departure.** Some examples are absence due to illness or hospitalization, employment, and visits.

To be considered temporarily absent, one must meet **ALL** of the following conditions:

1. The individual must have resided with the food unit immediately before the absence,
2. The individual intends to return to the home, and the food unit must maintain the home for him/her,
3. If the absent person is a child, the caregiver of the absent child is responsible for the child's care and control when the child returns to the home, and
4. **If the absent person is an adult, the adult must still be responsible for care and control of the child during their absence.**

(Emphasis added).

FS Handbook §3.2.1.2.

In this case, the petitioner was not responsible for the care and control of her two children during her three month absence in [REDACTED]. Under this policy and set of facts, petitioner does not qualify for the temporary absence policy, and no exceptions are present. The county agency representative explained that that petitioner was incorrectly awarded total FS benefit of \$367 during the FS overpayment of June, 2014 because the county agency did not discover that petitioner lived in [REDACTED] until during June, 2014. Thus, petitioner had no residence eligibility for Wisconsin FS benefits during the FS overpayment period.

During the September 4, 2012 hearing, petitioner did not contest that her FS household had received FS benefits during June, 2014.. Petitioner was unable to present any reliable evidence to refute or undermine the county's substantial testimony or evidence that petitioner resided in the State of [REDACTED] during more than the FS overpayment period of June, 2014. The petitioner unconvincingly argued that she was only "on vacation" for those three months. However, as indicated above, being on vacation for more than two months and not being responsible for the care and control of her children does not meet temporary absence requirements for continued FS eligibility.

The petitioner contended that it was unfair that the county agency was seeking to recover the FS overpayment. However, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . ." 7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Furthermore, it is the long-standing position of the Division of Hearings & Appeals that the Division's Administrative Law Judges lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). Accordingly, based upon the above, I conclude that that petitioner was overissued FS benefits of \$367 for the month of June, 2014, due to petitioner residing in [REDACTED] for three months while still receiving FS benefits from Wisconsin pursuant in violation of the residency requirements of 7 C.F.R. 273.3(a).

### **CONCLUSIONS OF LAW**

The county agency is correctly seeking recovery of petitioner's FoodShare (FS) overpayments of \$367 for the month of June, 2014, due to petitioner residing in [REDACTED] for three months while still receiving FS benefits from Wisconsin in violation of the residency requirements of 7 C.F.R. 273.3(a).

**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 6th day of October, 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 October 6, 2014.

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