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[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/159866

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 15, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 18, 2014, at Milwaukee, Wisconsin. The record was held open post-hearing for the Petitioner to submit additional information. Additional information was submitted on October 2, 2014 and the record was closed.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits as follows:

\$3,128 for the period of January 1, 2012 – October 31, 2012  
\$5,240 for the period of November 1, 2012 – October 31, 2013  
\$3,180 for the period of November 1, 2013 – May 31, 2014

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: Katherine May  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 7, 2011, the Petitioner submitted a six month report form (SMRF). She reported a household of three. She submitted three verifications from Milwaukee [REDACTED] reporting that Petitioner, her son and her daughter ended their employment on September 28, 2011. The case was pended for verification of employment status.
3. On October 17, 2011, the Petitioner started working at [REDACTED].
4. The Petitioner contacted the agency by phone on October 24, October 28, and November 11, 2011. There is no indication that she reported her employment with [REDACTED] during any of those contacts.
5. On November 7, 2011, the agency received employment verifications from [REDACTED] reporting that employment for Petitioner, her son and her daughter ended on October 16, 2011 and the date of their last paychecks was October 21, 2011.
6. On November 14, 2011, the agency issued a Notice of Decision to the Petitioner informing her that she was approved for FS benefits in the amount of \$320 for October, 2011 and \$526/month effective November, 2011. The notice also informed her that the agency budgeted earned income of \$1,291.45/month for the Petitioner from Milwaukee [REDACTED]. It further informed the Petitioner that she was required to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly income exceeded \$2,008.
7. On December 12, 2011, the agency issued a Notice of Decision to the Petitioner informing her that effective January 1, 2012, her FS benefits would decrease to \$494/month. The only income budgeted was unemployment compensation benefits for Petitioner's daughter and son in the total amount of \$709.50/month. It also informed the Petitioner that she was required to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly income exceeded \$2,008.
8. On March 14, 2012, the Petitioner submitted a SMRF. She reported a household of three. She reported UC benefits received for herself, her son and her daughter. She reported employment with [REDACTED] ended in October, 2011 for herself, her son and her daughter. She reported no other income.
9. On March 15, 2012, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would decrease to \$240/month. The agency budgeted earned income for Petitioner's son and daughter from [REDACTED]. The agency also budgeted unemployment compensation benefits for Petitioner's son and daughter. No other income was budgeted. The notice informed the Petitioner that she was required to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly income exceeded \$2,008.
10. On March 23, 2012, the Petitioner contacted the agency regarding the agency budgeting earned income from [REDACTED]. The agency updated the case. On March 26, 2012, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be \$526/month effective May 1, 2012. The only income the agency budgeted was unemployment compensation benefits of \$81/month for Petitioner's son and daughter. The notice informed the Petitioner that she was required to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly income exceeded \$2,008.
11. On May 18, 2012, the agency received verification from [REDACTED] reporting that the Petitioner, her son and her daughter started working on April 6, 2012. The employer reported the Petitioner would work approximately 30 hours/week at \$8.80/hour, the Petitioner's son would work approximately 26 hours/week at \$8.40/hour, and the Petitioner's daughter would work approximately 20 hours/week at \$7.35/hour.

12. On May 29, 2012, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end effective July 1, 2012 due to household income exceeding the program limit. The agency budgeted unemployment compensation benefits for the Petitioner's son and daughter and earned income for the Petitioner, the Petitioner's son and daughter.
13. On May 30, 2012, the Petitioner's daughter applied for W-2 benefits.
14. On June 29, 2012, the Petitioner contacted the agency. The case was reviewed and the unemployment compensation benefits for Petitioner's son and daughter were removed.
15. On July 2, 2012, the agency issued a Notice of Decision to the Petitioner informing her that she would receive \$210/month in FS benefits effective July 1, 2012. The agency budgeted earned income of Petitioner and Petitioner's son from [REDACTED] in the amount of \$2,074.32/month. The notice informed the Petitioner that she was not required to report changes until the next six month review.
16. On August 17, 2012, the agency issued a Notice of Decision to the Petitioner informing her that her benefits would decrease to \$0/month effective September 1, 2012 due to household income exceeding the program limit. The agency budgeted earned income of \$2,074.32/month for Petitioner and her son from [REDACTED] and W-2 benefits for Petitioner's daughter of \$274 for August and \$673 effective September 1, 2012. On August 17, 2012, the Petitioner contacted the agency to report that her daughter had a baby that should be added to the case.
17. On August 29, 2012, the Petitioner reported her son is no longer a member of the household.
18. On September 4, 2012, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits in the amount of \$233/month effective October 1, 2012. The agency budgeted earned income for the Petitioner from [REDACTED] in the amount of \$1,808.20. The notice also informed the Petitioner that she was required to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly income exceeded \$2,008.
19. On October 16, 2012, the Petitioner's daughter submitted an application for FS benefits. She reported she is homeless but provided her mother's address as a mailing address. She reported her newborn child. She reported no income.
20. On October 17, 2012, the Petitioner submitted a SMRF. She reported herself, her daughter and her grandson in the household. She reported her employment with [REDACTED] and unemployment compensation benefits.
21. On October 18, 2012, the agency issued a Notice of Action and Proof Needed to the Petitioner requesting an interview and employment verification from [REDACTED]. The due date was October 28, 2012. On October 18, 2012, the Petitioner contacted the agency and reported her seasonal employment with [REDACTED] ended.
22. On November 1, 2012, Petitioner's renewal was completed. On November 2, 2012, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits of \$515/month for a household of three. The agency budgeted no income for the household. The notice also informed the Petitioner that she was required to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly income exceeded \$2,069.
23. On March 19, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would increase to \$526/month. It notified her that because W-2 benefits have ended, the household would receive Transitional FS benefits of \$526/month until August, 2013.
24. In April, 2013, Petitioner's daughter started working at [REDACTED]. Petitioner did not report this to the agency.
25. On August 9, 2013, the Petitioner contacted the agency to complete her renewal. Petitioner reported she and her daughter work at [REDACTED]. On August 13, 2013, the agency issued a

Notice of Proof Needed for employment for Petitioner at [REDACTED] and for Petitioner's daughter at [REDACTED] and [REDACTED].

26. On September 10, 2013, the agency received employment verification and actual wage information for the Petitioner's daughter from [REDACTED]. The agency also received employment verification for Petitioner's daughter from [REDACTED]. Petitioner completed a renewal on or about September 26, 2013. She reported earned income from [REDACTED] and her daughter's earned income from [REDACTED] and [REDACTED].
27. On September 27, 2013, the agency issued a Notice of Decision informing the Petitioner that she would receive FS benefits of \$85 for September, 2013 and she would receive \$481/month effective November 1, 2013. The agency budgeted earned income for the Petitioner from [REDACTED] and her daughter's earned income at [REDACTED]. The notice informed the Petitioner that she was required to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly income exceeded \$2,116.
28. On February 28, 2014, a referral was made for an overpayment based on a SWICA discrepancy for the 2<sup>nd</sup> quarter of 2013 based on wages not reported for [REDACTED] and [REDACTED].
29. On March 14, 2014, the Petitioner submitted a SMRF. She reported a household of three. She reported her daughter's employment with [REDACTED].
30. On March 17, 2014, the agency issued a Notice of Proof Needed to the Petitioner requesting employment verification for Petitioner's daughter from [REDACTED].
31. On March 27, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would receive FS benefits of \$497/month effective May 1, 2014. The agency budgeted \$0 income for the household. The notice informed the Petitioner that she was required to report to the agency by the 10<sup>th</sup> day of the next month if her gross monthly income exceeded \$2,116.
32. On May 1, 2014, the agency issued a Notice of Proof Needed to the Petitioner requesting employment verification for the Petitioner's daughter from [REDACTED].
33. On May 19, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her benefits would end on June 1, 2014 due to failure to provide requested verifications.
34. On June 11, 2014, the agency found earned income verification in the Work Number for both the Petitioner and her daughter at [REDACTED]. The verification reports that Petitioner has worked at [REDACTED] since October 17, 2011.
35. On June 16, 2014, the agency issued FS Overpayment Notices to the Petitioner, her son and her daughter notifying them that the agency intends to recover an overissuance of FS benefits in the amount of \$3,128 for the period of January 1, 2012 – October 31, 2012, \$5,240 for the period of November 1, 2012 – October 31, 2013, and \$3,180 for the period of November 1, 2013 – May 31, 2014.
36. On August 15, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error").<sup>7</sup> C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, § 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FS Handbook, § 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to

discovery. FoodShare Wisconsin Handbook, § 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. Id.

The “discovery” date is “the date that the agency became aware of the potential that an overissuance may exist.” BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the evidence in the case comments indicates that the agency became aware of a potential overpayment on February 28, 2014.

The agency alleges that this overpayment results from the Petitioner’s failure to accurately report her earned income exceeding 130% federal poverty level (FPL), when it did so. Specifically, the agency alleges the Petitioner did not report her employment with ██████, did not timely report her daughter’s employment with ██████ and did not report receiving child support payments. Therefore, household income was not accurately budgeted in determining her eligibility and FS allotments. The Petitioner testified that she believed she had reported her employment with ██████ and disputes the agency’s contention that she did not report.

The evidence shows that Petitioner was repeatedly informed, in renewal applications and through notices sent to the Petitioner in 2012, 2013 and 2014, of her responsibility to report any increase in gross monthly income that causes the household’s income to exceed 130% of the Federal Poverty Level for the reported household size by the 10th of the next month. The applications indicate that all earned income must be reported. The notices indicated the income that the agency was using to determine Petitioner’s eligibility and allotment. The evidence of actual income received by the Petitioner’s household clearly demonstrates that the Petitioner’s household income exceeded 130% of the Federal Poverty Level in November, 2011. She was required to report this to the agency by December 10, 2011 which would have impacted her benefits starting January, 2012. Household income continued to exceed 130% of the Federal Poverty Level from February, 2012 – May, 2014 with the exception of two months.

The Petitioner’s evidence did not demonstrate that she properly reported her earned income to the agency. Specifically, there is no evidence that she reported her employment with ██████ or her child support income. Also, Petitioner did not report her daughter’s employment at ██████ until the agency discovered her employment there several months after she started her job.

I reviewed the agency’s calculations of the Petitioner’s household income and the worksheets calculating the overpayment. I find no error in those calculations. This is a client error and therefore the agency is entitled to recover benefits for the years of 2012, 2013 and 2014.

Based on evidence that Petitioner failed to properly report household income, I conclude the agency properly seeks to recover FS benefits from the Petitioner.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover FS benefits from the Petitioner as follows:

\$3,128 for the period of January 1, 2012 – October 31, 2012  
 \$5,240 for the period of November 1, 2012 – October 31, 2013  
 \$3,180 for the period of November 1, 2013 – May 31, 2014

**THEREFORE, it is**

**ORDERED**

That the Petitioner’s appeal 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 21st day of October, 2014

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\sDebra Bursinger  
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 21, 2014.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability