



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/160040

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 19, 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 17, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that petitioner is liable for a \$4,766 FoodShare (FS) overissuance per claim number 1900411551.

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: Simone Johnson  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was a recipient of FS as a household of 3 and underwent a renewal in December 2012. Self-employment income was based on 2011 taxes as 2012 taxes had not been completed.

Petitioner was notified on 12/19/12 that she was to report if her monthly income exceeded \$2,069.

3. The husband's self-employment income exceeded the reporting requirement based on 2013 tax return indicating self-employment 2013 income of \$3,171.17 per month.
4. Petitioner began working at [REDACTED] on July 29, 2013. Her gross wages were \$2,432.36 in August 2013. This employment was not reported to the agency until 12/30/13 when petitioner submitted a six-month report form (SMRF).
5. Household income exceeded FS eligibility thresholds for the household from March 2013 through December 2013.
6. On August 15, 2014, notice was sent to petitioner indicating the overissuance for this period in the amount of \$4,766.

### 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(c). 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(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

An FS household is required to report an increase in income within 10 days if the increase causes income to go above 130% of poverty. Handbook, §§ 6.1.1.2.

The record indicates the household submitted 2011 tax return and a 2012 tax return to the agency as part of the eligibility and allotment determinations for the 2013 year. But, the tax returns clearly did not reflect the actual sums being earned by the household. [REDACTED] was earning more than he had previously and this was not discovered until a review of the 2013 tax return. The household had a duty to report the wages that were over the reporting requirement. Furthermore, petitioner herself got a job in July earning an amount that, by itself, exceeded the reporting requirement. Yet, this job and associated wages were not reported until the SMRF was filed in December. From July until December, the household was earning more than three times what the agency thought the household was earning based on the petitioners submitted tax returns and lack of reports of changes. The family should not have been getting FS at all during the overpayment period.

Petitioner argued that she did not report any of the information regarding income changes because she thought that the FS case would close and that she had no such obligation. But, moments later at hearing petitioner conceded that she knew the case was open and that she used her FS card up until December 2013 explaining that the case should have closed but did not: "if I am not going to apply for something but you are going to keep giving me something then it is going to be used."

The question in matters relating to FS overpayments is whether the household received benefits to which they were not otherwise entitled to receive. In this case, the household would not have received benefits if the agency knew the actual income. From March 2013 onward, the agency did not know the actual income and petitioner was aware of her duty to report. On this record there was a clear overpayment which must be recouped.

**CONCLUSIONS OF LAW**

The agency correctly determined an overpayment of FS from March to December 2013 in the amount of \$4,766.

**THEREFORE, it is ORDERED**

That this matter 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 14th day of October, 2014

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\sJohn P. Tedesco  
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 14, 2014.

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