



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/161193

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 10, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare (FS) benefits, a hearing was held on October 30, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner was overissued FS benefits which are subject to recovery.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



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:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner's FS household, at all times material hereto, consisted of three people. Petitioner's son turned eighteen on February 23, 2012.

3. Petitioner did not report her son's income, as she understood that she did not need to do so since he was a student.
4. For the period of September 1, 2012, through February 28, 2013, petitioner was overissued FS in the amount of \$551.00. For the period June 25, 2013, through November 30, 2013, petitioner was overissued FS in the amount of \$586.00.
5. On September 5, 2014, overpayment notices were issued to petitioner, detailing the information in Finding of Fact 4 and including the calculations of those overpayments.
6. For the overpayment periods at issue here, petitioner's son was listed on her FS case yet she was not reporting income attributable to him in calculation of her FS benefits.

### **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, *FoodShare Wisconsin 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 agency alleges that this overpayment results from the petitioner's failure to accurately report her household earned income. Specifically, the agency alleges the petitioner did not report her son's correct actual income, and therefore her income was not accurately budgeted in determining her eligibility and FS allotments in the test period.

Petitioner explained that she had notified her economic support worker of her son's income at times, but had always been informed that her son's income did not factor in, since he was still in school. The petitioner does not dispute any specific calculations, but argues that she simply never knew that his income should have been included. As explained above, *all* FS overpayments are subject to recovery – whether based upon client or agency error. The respondent has established that an FS overissuance occurred here. I have reviewed the respondent's calculations, and have found no error, nor has the petitioner identified any computational error. Therefore, the overpayment recovery must be upheld as petitioner has not successfully rebutted the agency assertion of an FS overpayment due to client error.

### **CONCLUSIONS OF LAW**

For the period of September 1, 2012, through February 28, 2013, petitioner was overissued FS in the amount of \$551.00. For the period June 25, 2013, through November 30, 2013, petitioner was overissued FS in the amount of \$586.00.

**NOW, THEREFORE, it is ORDERED**

That 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

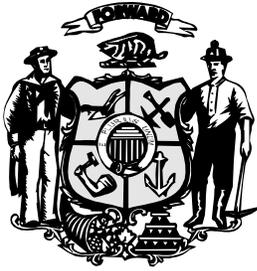
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 25th day of November, 2014.

---

\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 25, 2014.

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