



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/162452

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 5, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Rusk County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on February 18, 2015, at Ladysmith, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare.

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: Beulah Garcia

Rusk County Department of Social Services  
Courthouse  
311 Miner Avenue East, Suite C240  
Ladysmith, WI 54848

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Rusk County.
2. The county agency seeks to recover \$851 in FoodShare the petitioner received from September through December 2012.

3. The county agency notified the petitioner of the overpayment on October 24, 2014. There is no evidence that it was aware of the overpayment for any significant time before this.
4. The petitioner reported all changes of her income that occurred in 2012 to the agency on time.

### **DISCUSSION**

FoodShare agencies must “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all overpayments, regardless of whose error caused the overpayment. But the agency’s ability to recover an overpayment has limits. If the FoodShare agency commits an error by taking an incorrect action or failing to correct an action, it can recover an overpayment back only one year from the date it discovers the potential overpayment. *FoodShare Wisconsin Handbook*, §§ 7.3.1. and 7.3.2.1.; 7 CFR § 273.18(c)(1). The county agency seeks to recover \$851 in FoodShare the petitioner received from September through December 2012 because it alleges that she did not report that her income had increased. She contends that she reported this to the agency. Because the alleged overpayment occurred more than a year before it was discovered, if she did report her change of income, the agency cannot recover the overpayment.

The agency, as the party that seeks to change the current state of affairs by recovering an overpayment, has the burden of proving that an overpayment occurred by the preponderance of the credible evidence. There is not a lot of evidence concerning whether the petitioner reported her change of income. She testified that she did, but she has no documentation such as a fax receipt, telephone record, or acknowledgement to back up her claim. Nothing in the agency’s records indicate that it received anything from the petitioner informing it that her income had increased, but none of its workers who would have handled such a document testified or were available for questioning. Agency records are generally accurate. However, this occurred when the department was making the transition to the consortia and Centralized Data Processing Unit. The transition was full of growing pains: Almost every month, petitioners testified about lost and misplaced documents they submitted to these units. Although not every complaint about these problems was accurate, the testimony was frequent and consistent enough to establish that there was a problem, and often that testimony was bolstered with hard evidence such as confirmation that the document had been received. The petitioner in this matter was credible. She testified that she always reported her changes of income immediately and had done so frequently. Of course, she could have been mistaken about this particular instance. But unless the weight of the evidence tips at least slightly in the agency’s favor, she does not have to repay the overpayment. Based upon her testimony and the lack of first-hand testimony against her, I find that she did report the change. Therefore, the agency cannot recover the alleged overpayment.

### **CONCLUSIONS OF LAW**

The department cannot recover any of the FoodShare received by the petitioner from September through December 2012 because she reported that her income had changed and more than one year has passed since the overpayment was discovered.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take all steps necessary to stop collecting any overpayment of FoodShare received by the petitioner from September through December 2012.

**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 27th day of February, 2015

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\sMichael D. O'Brien  
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 February 27, 2015.

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