



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/163147

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 09, 2015, 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 January 29, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner was overpaid FS due to failure to correctly report her income.

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: Jose Silvestre

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 # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was an FS recipient in a household of one during the period of August 22, 2013, through July 31, 2014.

3. August 22, 2013, through July 31, 2014, petitioner received FS based upon \$526.40 to \$577 in monthly income from her job as a server. A state wage match report indicated that petitioner was receiving additional income in the amount of \$1,000.
4. The additional income would have put petitioner's household over the FS income limit if it had been budgeted.
5. By a notice dated December 29, 2014, the county informed petitioner that she was overpaid \$1,335.00 in FS from August 22, 2013, through July 31, 2014.

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

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). The county identified the overpayment as being caused by petitioner's failure to accurately report her income. Petitioner testified that her employer provided the verification of earnings, and it is not her fault if the employer submitted incorrect or untimely information. However, while she may not be at fault here, FS regulations require the recovery of overpayment regardless of fault. Petitioner also noted that her net income is much lower than her reported, or gross, income. FS regulations require that the respondent utilize gross income for eligibility determinations. It appears that much of petitioner's income consists of tips, and as such, her net income is even less reliable as an indicator of petitioner's household income. The petitioner has failed to establish that the respondent erred in determining that an overpayment occurred here.

### CONCLUSIONS OF LAW

The county correctly seeks recovery of an FS overpayment.

**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 27th day of February, 2015

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\sPeter McCombs  
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 February 27, 2015.

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