



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/163180

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 14, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Langlade County Department of Social Services in regard to FoodShare benefits (FS), a telephone hearing was held on February 04, 2015.

The issue for determination is whether the agency properly seeks to recover an overpayment of FS benefits in the amount of \$400 from the Petitioner for the period of June, 2012 – July, 2012.

There appeared at that time 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: Rhonda Strandberg

Langlade County Department of Social Services  
1225 Langlade Road  
Antigo, WI 54409-2795

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Florida.
2. Petitioner has been deemed a liable party for the following FS overpayments:

██████████	\$ 82.00
██████████	306.00
██████████	51.00
██████████	27.00

3. Petitioner filed a Request for Fair Hearing on January 14, 2014.

**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”). 7 C.F.R. § 273.18(b), emphasis added; see also FS Handbook, § 22.2.1.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, the county agency determined that the petitioner was liable for an FS overpayment established against a FS household headed by his child’s grandmother. The respondent argued that, as an adult member of that household during the overpayment period, petitioner is liable. The record does not disclose any information regarding the overpayment calculations, nor were any notices or repayment agreements offered as evidence. The respondent’s case is entirely based upon testimony provided at hearing that an overpayment(s) occurred during the time period of March 1, 2013, through February 28, 2014. The respondent’s representative testified that the overpayment was due to a failure to report earned income. No documentary evidence was submitted by the respondent to establish the overpayment.

The petitioner rebutted the agency case with his own testimony indicating that he did not live with his minor child’s grandmother during the entire term of the overpayment. The respondent corroborated that testimony, indicating that her records show that the petitioner was reported out of the house in December, 2013. The respondent was unable to overcome this rebuttal by offering evidence countering the petitioner’s testimony. Likewise, the respondent did not provide any information to verify which, if not all, of the FS overpayment claims would have been affected by the fact that petitioner was not an adult member of the household during the entirety of the overpayment period.

Based upon this threadbare record, I must conclude that the agency has not established by the preponderance of the evidence that the petitioner is liable for the asserted FS overpayments. While the petitioner conceded living with his child’s grandmother for a period of time, the respondent has failed to provide any evidence to establish that he was an adult member of the household during the overpayment period. The petitioner’s FS overpayment liability must be rescinded, and the agency must cease all collection activities premised upon these four overpayment claims, as specifically pertains to petitioner.

**CONCLUSIONS OF LAW**

That the county agency incorrectly determined that the petitioner was a liable party for the following FS overpayments:

██████████	\$ 82.00
██████████	306.00
██████████	51.00

██████████ 27.00

**NOW, THEREFORE, it is ORDERED**

That the matter is remanded to the county agency with instructions to: rescind petitioner’s liability for FS overpayments:

██████████ \$ 82.00  
██████████ 306.00  
██████████ 51.00  
██████████ 27.00,

and cease all collection actions, as to petitioner, premised upon these FS overpayment claims. These actions shall be completed within 10 days of the date of this Decision.

**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 2nd day of March, 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 March 2, 2015.

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