



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/163784

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 06, 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 February 26, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly established a FoodShare (FS) overpayment in the amount of \$1,111.00 for the period of January 15, 2014 through April 30, 2014.

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: Katherine May and Tygene Taylor  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner received \$1,111.00 in FS benefits from January 15, 2014 through April 30, 2014.
3. When the petitioner applied for FS benefits, the petitioner stated that she was unemployed. The petitioner received FS benefits based upon this information.

4. The agency later learned through the state wage match records that the petitioner received earned income from January 15, 2014 through April 30, 2014. This earned income made the petitioner ineligible for FS benefits.
5. On January 14, 2015 the agency sent the petitioner an overpayment notice. The notice stated that the petitioner was overpaid \$1,111.00 in FS benefits from January 15, 2014 through April 30, 2014. The claim number for this overpayment is [REDACTED].
6. On February 9, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

### 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 a FS household are liable for an overpayment. 7 C.F.R. §273.18(a). There is a one year look back period for an overpayment that is caused by agency error. *FoodShare Wisconsin Handbook*, § 7.3.2.1. If the overpayment is caused by client error there is a six year look back period. *Id.*

In this case the petitioner did not dispute that she was overpaid FS benefits. In fact the petitioner admitted that during this overpayment period she was working and earned \$1,358.00 per bi-weekly pay period. The state wage match records show that the petitioner's earned income was greater than \$1,358.00 per bi-weekly pay period. Nonetheless, assuming the petitioner's testimony is correct, she would have been completely ineligible for FS benefits with a bi-weekly pay of \$1,358.00.

The petitioner's defense is that she disclosed her employment to the agency, and the agency failed to act on this information. This is not a persuasive legal argument in this case. Even if the overpayment was due to agency error, the agency established the overpayment within the statutory time period. In addition, the federal regulations direct the agency to establish an overpayment even if it is agency error that caused the overpayment. I note that the agency states that the petitioner did not disclose her employment, and that the overpayment is due to "client error." The reason for the overpayment is not an issue in this appeal. Regardless of whether the overpayment was due to agency or client error, the agency must establish and collect this overpayment.

### CONCLUSIONS OF LAW

The agency correctly established a FoodShare (FS) overpayment in the amount of \$1,111.00 for the period of January 15, 2014 through April 30, 2014.

**THEREFORE, it is**

**ORDERED**

That the petition 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 Milwaukee,  
Wisconsin, this 3rd day of March, 2015

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\sCorinne Balter  
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 3, 2015.

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