



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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/163895

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 06, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Outagamie County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 04, 2015, at Appleton, Wisconsin.

The issue for determination is whether the Department, by its agents, correctly determined that the petitioner was overpaid FS in the period of June – October, 2012, due to client error.

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: Debbie DeBruin

Outagamie County Department of Human Services  
401 S. Elm Street  
Appleton, WI 54911-5985

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County. She was the casehead of a FS group of five in the period of June – October, 2012, consisting of herself, her mother, and her three minor children. Exhibit 2.

2. Petitioner applied for FS for herself and her three minor children in January, 2012, and was approved. The approval notice informed petitioner of the requirement that she report if her household's total monthly income exceeded \$2,422.00. Exhibit 2-2.
3. On June 20, 2012, petitioner called to report that her mother was now residing with her. Petitioner's mother and her mother's income were added to petitioner's case. Exhibit 2-10.
4. On October 5, 2012, the respondent processed petitioner's online renewal and determined that petitioner's household was ineligible for ongoing FS benefits. Exhibit 2.
5. The respondent received a State Wage Crossmatch (database maintained by the Department of Workforce Development) alert in December of 2012, which reflected a higher 2<sup>nd</sup> quarter 2012 income than petitioner reported. The respondent concluded that the petitioner had earnings that had not been accurately reported and that affected her FS eligibility. Exhibit 2.
6. The respondent requested and received employer verification forms showing petitioner's actual gross income during the time period of June, 2012 – October, 2012. Exhibit 2-3.
7. On May 29, 2014, the agency issued a FoodShare Overpayment Notices and Worksheets to the petitioner informing her that the Department had determined that she had been overpaid FS benefits per two overpayment claims:

Claim no. [REDACTED]	6/1/12 – 7/31/12	\$405.00
Claim no. [REDACTED]	8/1/12 – 10/31/12	\$566.00

Exhibits 2-4 and 2-5.

8. In making these overpayment calculations, the agency used prospective monthly gross income as of June, 2012. Exhibit 2.
9. The petitioner signed and returned a Repayment Agreement to the respondent on February 6, 2014.
10. On February 6, 2015, the petitioner filed an appeal in the instant action contesting the accuracy of the FS overpayment determination.
11. At the hearing held on March 4, 2015, the petitioner asserted that her actual earned income was \$25,459.00, as reported on her 2012 form 1040A tax return, and that it was not distributed evenly as petitioner had utilized intermittent FMLA in 2012 due to her diagnosis of lupus.
12. The petitioner's June, 2012 – October, 2012 gross earned income reported by [REDACTED] does not match the [REDACTED] earnings statements supplied by the petitioner, and neither of those sources of earnings information matches the gross earned income data used on respondent's FoodShare Overpayment Worksheet. Compare, Exhibit 2-3, Exhibit 3, Exhibit 2-4, and Exhibit 2-5.

**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); 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 “discovery” date is “the date that the agency became aware of the potential that an overissuance may exist.” BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the evidence in the case comments indicates that the agency became aware of a potential overpayment on December 14, 2012. Exhibit 2.

The agency alleges that this overpayment results from the Petitioner’s failure to accurately report her earned income. Specifically, the agency alleges the Petitioner did not report her correct actual income and therefore her income was not accurately budgeted in determining her eligibility and FS allotments in the test period. The Petitioner asserts that her earned income records do not support the earned income figures used by the respondent in establishing the overpayment.

A review of the petitioner’s June, 2012 – October, 2012 gross earned income provides a disjointed earnings picture:

	█’s Employer verification (Exhibit 2-3)	Petitioner’s Earnings Statement from █’s (Exhibit 3)	Respondent’s earned income per FS Overpayment Worksheets’ Corrected Budget line item 6 (Exhibits 2-4 and 2-5)
June, 2012	\$2250.55	\$1717.73	\$2237.31
July, 2012	\$2075.60	\$2750.61	\$2237.31
August, 2012	\$3865.23	\$2579.59	\$2237.31
September, 2012	\$2442.08	\$2442.08	\$2237.31
October, 2012	\$2453.85	\$2453.85	\$2237.31
<b>Monthly average</b>	<b>\$2617.46</b>	<b>\$2388.77</b>	<b>\$2237.31</b>

See, Exhibit 2-3, Exhibit 3, Exhibit 2-4, and Exhibit 2-5.

Since the petitioner’s budgeted prospective earned income during the months of June, 2012, through October, 2012 was only \$1392.40, it would appear that petitioner was overpaid FS for part or all of the time period. However, petitioner also questioned why her income could not be averaged out for twelve months because she worked only sporadically in 2012. *The FoodShare Wisconsin Handbook* § 4.3.2, no. 13, provides that income can be averaged for an entire year only if it is contractual, such as a school teacher contract for an entire year but paid out in nine months. Petitioner’s income is not contractual, and thus it would be budgeted for FS in the months actually received.

The main question for me is the prospective budgeting as of June, 2012, when the respondent had access to petitioner’s actual income for the overpayment period. While the *Handbook*, at § 1.2.4.2, provides that in general the agency should utilize the income from the last thirty days, there are situations where the last thirty days is not best indicator of income. If income fluctuates a longer period can be used. *Id.*

Petitioner discussed her fluctuating income, and presented her 2012 IRS form 1040A. That showed her annual income of \$25,459. That amount divided by twelve months equals \$2,121.58. I conclude that amount to be the better estimate of petitioner’s monthly earned income, especially in light of the conflicting earned income information present in the record. The 2012 annual income figure takes into account the impact of petitioner’s unpaid FMLA leave on her income. I thus will order the county to re-determine FS using the lower monthly income.

The matter will be remanded to the Department to review and re-determine the overpayment computations using the actual earned income amounts I have found in Finding of Fact #11, above, instead of the averaged earned income amounts the Department used in the original overpayment computations, with notice.

If the petitioner is again aggrieved by the re-determined overpayment amount, she must file a *new* appeal at that time.

### CONCLUSIONS OF LAW

That the agency has erred in determining the petitioner's earned income for the months of June – October, 2012, in computing FS overissuance claim Nos. [REDACTED] and [REDACTED]; and the matter must be remanded to the agency to review and re-determine the petitioner's overpayment using an average of her actual earned income in 2012.

**THEREFORE, it is**

### ORDERED

That the matter is remanded to the Department and its agents, with instructions to review and re-determine FS overissuance claim Nos. [REDACTED] and [REDACTED] using an average of her actual earned income in 2012, as stated in Finding of Fact #11; and issue Amended Overissuance Notification(s) to the petitioner informing her of the ultimate re-determination. 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 25th day of March, 2015

---

\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 March 25, 2015.

Outagamie County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability