



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/164229

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 26, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 18, 2015, at Madison, Wisconsin.

The issue for determination is whether the Department correctly determined that the petitioner was overpaid FS benefits from January through December 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: Megan Thurston, Overpayment Spec.  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. The petitioner received FS as a household of two persons from at least December 2013 through December 2014.

3. On February 19, 2015, a Foodshare Overpayment Notice and worksheets were sent to the petitioner, advising that she had been overpaid \$1,981.00 in FS for the 1/1/14 – 12/31/14 period (claim # [REDACTED]). Exhibit 6. The overpayment was due to combined worker/client error from January through June, and solely client error for under-reporting income from July 2014 forward.
4. The petitioner worked at [REDACTED] from at least December 2013 forward throughout the overpayment period. She was required to report earnings increases above a set threshold within 10 days of occurrence. She did not report exceeding the threshold at any time in December 2013 or during 2014.
5. In conjunction with a December 2013 Six Month Report Form, the petitioner submitted paystubs correctly showing her hourly rate of pay as \$13.00. An agency worker incorrectly entered her hourly wage as \$10.50. However, the petitioner also erred at that time, because she did not mention her bonus checks. The petitioner's case underwent an annual review on May 20, 2014, at which time verification of her last 30 days' pay was requested. The petitioner submitted three paystubs, and the agency worker correctly entered the hourly rate of \$13.00, times 40 hours weekly. However, the petitioner did not submit two bonus checks received during the requested period, making the overpayment completely client error from that point forward.
6. The agency learned of the petitioner's excess December 2013 and 2014 income when it received an employer wage match report from the Wisconsin Department of Workforce Development in 2014. When the petitioner's correct earnings amounts were entered in the FS case, the results were that she should have received a \$15 allotment (instead of the issued \$261) from January through June, and zero (instead of the issued \$15) from July through December 2014.

## DISCUSSION

### I. AN FS OVERPAYMENT MUST BE RECOVERED, REGARDLESS OF FAULT.

If an FS overpayment occurred during the period described above, the agency must make an effort to recover it. An FS overpayment claim is defined as:

#### **273.18 Claims against households.**

(a) *General.* (1) A recipient claim is an amount owed because of:

- (i) ***Benefits that are overpaid*** or
- (ii) Benefits that are trafficked. ...

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections ...

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred:

...

(b) *Types of claims.* There are three types of claims:

(1) An Intentional Program violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in §273.16.

(2) An inadvertent household error claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) An agency error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency. The only exception is an

overpayment caused by a household transacting an untampered expired Authorization to Participate (ATP) card .

(c) *Calculating the claim amount* – (1) *Claims not related to trafficking.* (i) As a State agency, you must go back to at least twelve months prior to when you become aware of the overpayment ...

(e) *Initiating collection actions and managing claims.*

(1) *Applicability.* State **agencies must begin collection action on all claims** unless the conditions under paragraph (g)(2) of this section apply..

7 C.F.R. §273.18(a)-(e). See also, in accord, *FS Wisconsin Handbook (FSWH)*, 7.3.1.1 (viewable at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> . The above is a long way of saying that when an overpayment occurs, even if caused by agency error, the overpayment must be collected. There is a one-year time limit from discovery, however, for how far back in time the agency may go if the overpayment was due to agency error.

## II. THE PETITIONER WAS OVERPAID FS FOR THE 1/1/14 – 12/31/14 PERIOD.

Neither the arithmetic of the agency's overpayment determination nor the amount of the petitioner's income is in dispute. The petitioner was required to report her bonus checks in 2014, and she did not do so. She explained that she only looked at the hourly rate on her two relevant review confirming notices from the Department, so she thought that she was reporting adequately. She stated that she did not multiply out her hourly wages to see if they matched the gross wage totals declared on the multiple benefit notices that she received. That is not a persuasive explanation. Further, if a recipient is allowed to ignore the wage totals on their notices, no one would be responsible for anything. I conclude that overpayment recovery is appropriate.

### **CONCLUSIONS OF LAW**

1. The petitioner was overpaid \$1,981 FS from January 2014 through December 2014.
2. The county agency is correctly pursuing recovery of that overpayment, pursuant to federal law.

**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 Madison,  
Wisconsin, this 31st day of March, 2015

---

\sNancy J. Gagnon  
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 31, 2015.

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