



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/164339

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 25, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on March 24, 2015.

The issue for determination is whether petitioner was overpaid FS.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jelena Jones, Fraud Specialist  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Racine County.
2. Petitioner received FS from at least October 2008-January 2009, and from April 2010-August 2010.

3. Petitioner failed to report all of her household's earned income during the periods of overpayment. On March 8, 2013 the agency discovered the income error and reviewed the case for a possible overpayment.
4. On January 16, 2015 the agency issued notices of decision to petitioner and to her husband stating that they were overpaid FS from December 1, 2008-January 31, 2009 (claim # [REDACTED]) in the amount of \$434 and from June 1, 2010-August 31, 2010 (claim # [REDACTED]) in the amount of \$665 due to client error. Exhibit E.

### 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(c). 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(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); See also FS Handbook, §7.3.1.2, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

Here, the agency argues that the petitioner did not report all of her income and therefore she received more FS than she was eligible for. The agency presented the worksheets to show what, if any, FS petitioner would have been eligible for had the correct income been budgeted. Petitioner raised no issue with the calculations and I have found no error in the determination of that income.

Petitioner argued that it was unfair to find her liable for the overpayment as she had been told by some unnamed worker that she did not have to report the changes because the worker did not have time to address the fluctuating income. I add for petitioner's information that federal law requires *all* FS overpayments be recovered, regardless of whether the recipient or the agency is at fault, and that all adult household members are liable. Those regulations provide, in relevant part, as follows:

- (a) Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18.

Based on the foregoing, I must find that the petitioner was overpaid FS, even if her failure to report was unintentional. She is reminded that if she still has or applies for FS that she may make arrangements for having her overpayment taken out of her current FS allotment per month, or make other arrangements for the repayment of the debt as described in the notice of overpayment.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### CONCLUSIONS OF LAW

Petitioner was overpaid FS from December 1, 2008-January 31, 2009 (claim # [REDACTED]) in the amount of \$434 and from June 1, 2010-August 31, 2010 (claim # [REDACTED]) in the amount of \$665 due to client error.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be 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 22nd day of April, 2015

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\sKelly Cochran  
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 April 22, 2015.

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