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Redact

STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

Redact

DECISION

FOP/164732

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 19, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on April 10, 2015, at Janesville, Wisconsin. At the request of the parties, the record was held open until April 17, 2015 for the submission of written closing argument to the Division of Hearings and Appeals (DHA). The county agency timely submitted its closing argument to DHA and to petitioner. However, petitioner did not submit any closing argument to DHA.

The issue for determination is whether the county agency is correctly seeking recovery of a FoodShare (FS) overpayment to the petitioner in the amount of \$360 during the period of July 1, 2014 through August 28, 2014, due to agency error to mistakenly issue FS to petitioner when he resided in a group facility which provided meals for him.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Redact

Respondent:

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

By: Redact, ESS  
Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [Redact]) is a resident of Rock County.
2. The petitioner applied for FoodShare benefits on July 1, 2014 for a household of one.
3. During the period of his July 1, 2014 FS application, petitioner resided at [Redact], a crisis intervention and stabilization facility group living arrangement. [Redact] provides meals to residents of that facility.
4. On July 14, 2014, the county agency erroneously approved FS benefits for the petitioner even though he received his meals at [Redact] in contradiction of FoodShare Handbook, 3.2.1.5.3.
5. On August 29, 2014, petitioner contacted the Southern Consortium call center to report that he left [Redact] on July 22, 2014.
6. The agency had already issued FS benefits of \$360 to petitioner for the period of July 1, 2014 through August 28, 2014.
7. The county agency sent a February 16, 2015 FoodShare Overpayment Notice to the petitioner stating that petitioner received an overpayment in the amount of \$360 during the period of July 1, 2014 through August 28, 2014, due entirely to agency error misapplying program policy.

### 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, Appendix 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, App. 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.*

As decided in prior cases before the Division of Hearings and Appeals (DHA), “discovery” was not the date of referral of a likely overpayment for investigation; discovery was the date when the agency actually determined an overpayment of a fixed amount occurred, and sent a notice to the FS recipient. Overpayments due to client error may be recovered for up to 6 years prior to discovery. However, an April 4, 2012 BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012), indicates the Department has received clarification from the Food and Nutrition Service (FNS) regarding the definitions of ‘aware’ and ‘discover’ and how the policy should be applied. The form of that clarification is not described. i.e., whether it was a phone call, letter, rule change reflected in the Federal Register or something else. Under the new policy the “discovery” date is not the county agency’s February 16, 2015 FS Overpayment Notice, but instead the “the date that the ESS became **aware** of the potential that an overissuance may exist.” In this case, that specific date appears unclear but is sometime during the early part of the month of February 2015 resulting in a February, 2015 “awareness” or “discovery” date.

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The overissuance period for non-client errors begins with the day the ESS discovered or became aware of the potential for an overissuance, and extends backward:

1. Twelve months,
2. To the month the error was effective had the worker acted on the change timely, whichever is the most recent.

It is essential that the date of awareness is documented in case comments. This date locks in the look back period and will not change regardless as to when the ESS calculates the overissuance amount.

In order to meet the established timeliness requirements, overpayment claims must be completed before the last day of the quarter following the quarter in which the ESS discovered or became aware of an overissuance. This holds true for both client and agency errors. Overissuance claims must be established and recovered even if they are not completed within this timeframe. Overissuance claims must be established and recovered even if they are processed late; failing to complete a claim within the given timeframe does not void the overissuance.

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*Operations Memo, 12-20, at page 3.*

Though the specific date of discovery/awareness is not well documented there is good evidence to indicate that it was during February, 2015, and about the same time as the February 16, 2015 FS overpayment notice sent to the petitioner.

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. During the April 10, 2015 hearing, the county representative presented testimony and evidence to support that it was correctly pursuing a FS overpayment against the petitioner even though the overpayment was due to agency error. The record was held open for closing arguments by the parties to DHA. See above Preliminary Recitals and above Findings of Fact. During the hearing, petitioner was unable to establish any error in the calculation of the FS overpayment or that the agency was correctly following FS policy.

The county representative admitted that the FS overpayment was entirely due to prior agency error with no fault by the petitioner. Overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Because the county discovered the petitioner's FS overpayment during February, 2015, the county may recover the FS overpayment retroactive for 12 months (or in this case less than 12 months during the period of July 1, 2014 through August 28, 2014).

During the hearing, petitioner argued to seek recovery of the non-client overpayment was unfair because the FS overpayment was not his fault, as it was caused entirely by agency error. The petitioner's contention is understandable. The petitioner also explained that it will be a financial hardship to repay the FS overpayments. However, since the July 1, 2014 through August 28, 2014 FS overpayment was created during the 12-month period, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless **of whose error caused the overpayment to occur**: "The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . . "7 C.F.R. § 273.18(a); see also FoodShare Wisconsin Handbook, 7.3.2.1. Accordingly, for the above reasons, the county agency is correctly seeking recovery of a FoodShare overpayment to the petitioner in the amount of \$360 during the period of July 1, 2014 through August 28, 2014, due to agency error to mistakenly issue FS benefits to the petitioner when he resided in a group facility which provided meals.

### CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a FoodShare overpayment to the petitioner in the amount of \$360 during the period of July 1, 2014 through August 28, 2014, due to agency error to mistakenly issue FS benefits to the petitioner when he resided in a group facility which provided meals.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 15th day of May, 2015

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\sGary M. Wolkstein  
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 May 15, 2015.

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