



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/165359

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 13, 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 May 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly assessed FS overpayments in the total amount of \$22,093.00 for the period from November 1, 2011 through October 31, 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Katherine May  
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. The petitioner has seven people in her household.
2. In October 2011 the petitioner completed a six month renewal for her FoodShare (FS) benefits. During this renewal the petitioner failed to report that she was employed with Elite Senior Living. This failure to report caused an overpayment error from November 1, 2011 through April 30, 2012. The petitioner was overpaid \$611.00 in FS benefits per month for a total overpayment of \$3,666.00. The petitioner does not dispute this portion of the overpayment.
3. In April 2012 the petitioner completed another six-month renewal. During this renewal one of the petitioner's employers correctly completed an employment verification of earnings form stating that the petitioner was paid weekly. The agency incorrectly budgeted this weekly income as monthly income. This caused an overpayment due to agency error from May 1, 2012 through June 30, 2012. The petitioner was overpaid \$339.00 in FS benefits in May 2012, and \$1,052.00 in June 2012. This is a total overpayment of \$1391.00. This portion of the overpayment is due to agency error.
4. In May 2012 the petitioner's gross household income was \$5,733.81. This is over 130% of the FPL for a household size of 7 in May 2012. In June of 2012 the petitioner had an obligation to report all of her household income including her husband's unemployment income and income that she had previously reported to the agency, but that the agency had incorrectly counted. The petitioner did not report her household income to the agency in June 2012. Changes reported in June 2012 would have been effective July 1, 2012. The petitioner was overpaid the following FS benefits: \$106.00 in July 2012, \$741.00 in August 2012, \$590.00 in September 2012, and \$746.00 in October 2012. This is a total overpayment amount of \$2,183.00 for July 1, 2012 through October 31, 2012. This overpayment is due to client error because the petitioner failed to report the household income in May 2012 despite being obliged to do so.
5. In October 2012 the petitioner completed another six-month renewal for her FS benefits. During this renewal the petitioner failed to report that she was employed with Silver Springs Operating. The failure to report caused an overpayment due to client error from November 1, 2012 through April 30, 2013. The petitioner was overpaid \$714.00 in FS benefits during each of these months for a total overpayment of \$4,284.00 from November 1, 2012 through April 30, 2013. The petitioner does not dispute this portion of the overpayment.
6. In April 2013 the petitioner completed another six-month renewal for her FS benefits. During this period, one of the petitioner's employers correctly completed an employment verification of earnings form stating that the petitioner was paid weekly. The agency incorrectly budgeted this weekly income as bi-weekly income. This caused an overpayment due to agency error from May 1, 2013 through October 31, 2013. The petitioner was overpaid the following FS benefits: \$349.00 in May 2013, and \$813.00 in June 2013, \$846.00 in July 2013, \$846.00 in August 2013, \$599.00 in September 2013, and \$446.00 in October 2013. This is a total overpayment of \$3,899.00. This portion of the overpayment is due to agency error.
7. During the April 2013 six-month renewal the petitioner's reported monthly gross income exceeded 130% of the FPL.
8. On October 23, 2013 the agency sent a referral to the program integrity unit. When the program integrity unit receives a referral about a possible program integrity issue or overpayment, the unit investigates the case to determine what, if any, action the agency should take. The program integrity unit never investigated this referral.
9. In October 2013 the petitioner completed another six-month renewal for her FS benefits. During the renewal period one of the petitioner's employers submitted an employment verification of earnings form stating that the petitioner is on call, and did not earn any income in the month of

- September 2013. This was a true statement for September 2013. The agency processed the renewal and did budget any income from this employer. This was effective November 1, 2013, the first month following the renewal.
10. On October 15, 2013 the agency sent the petitioner a notice stating the amount of income budgeted, and further explaining that if the household gross income increased to over \$3,858.00, the household must report that change. This \$3,858.00 amount is 130% of the FPL for this size household at the time of the notice. From November 1, 2013 through December 31, 2013 the household income remained below 130% of the FPL. The petitioner was overpaid \$233.00 in FS benefits in November 2013, \$233.00 in December 2013, and \$634.00 in January 2014 for a total overpayment of \$1100.00. This overpayment was due to agency error.
  11. In January 2014, the household income increased above 130% of the FPL. The petitioner failed to report her January income. The petitioner was overpaid the following FS benefits between February 1, 2014 and October 31, 2014: \$634.00 in February 2014, \$634.00 in March 2014, \$531.00 in April 2014, \$573.00 in May 2014, \$634.00 in June 2014, \$634.00 in July 2014, \$634.00 in August 2014, \$634.00 in September 2014, and \$665.00 in October 2014 for a total overpayment of \$5,573.00. This overpayment is due to client error.
  12. In October 2014 another referral was sent to the program integrity unit. This unit investigated the referral and on March 5, 2015 the agency sent the petitioner the following three notices of overpayment:
    - a. Claim number [REDACTED]
      - i. Period from November 1, 2011 through October 31, 2012
      - ii. Amount of overpayment was \$7,240.00
    - b. Claim number [REDACTED]
      - i. Period from November 1, 2012 through October 31, 2013
      - ii. Amount of overpayment was \$8,180.00
    - c. Claim number [REDACTED]
      - i. Period from November 1, 2013 through October 31, 2014
      - ii. Amount of overpayment \$6,673.00
  13. The notices stated that the reason for the overpayments was “misrepresentation of or failure to report earned income due to client error.”
  14. On April 13, 2015 the Division of Hearings and Appeals received the petitioner’s request for fair hearing.

### DISCUSSION

The Federal regulations requires States to establish a claim against any household that received an overissuance of FoodShare 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 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSWH)*, §7.3.2. Overpayments due to “client error” may be recovered for up to six years after discovery. *FSWH*, §7.3.2.1. Overpayments due to “agency error” may only be recovered for up to 12 months from the date of discovery. *Id.* The date of discovery is the date that the agency became aware of the potential overissuance. *Id.* This is synonymous with the date of awareness. *Id.*

November 1, 2011 through April 30, 2012

The petitioner does not dispute a portion of this overpayment from November 1, 2011 through April 30, 2012. On October 18, 2011 the petitioner completed a six-month renewal for her FoodShare (FS) benefits. During that renewal she failed to disclose that she was working and earning wages from Elite Senior Living. Thus this portion was caused by client error.

May 1, 2012 through June 30, 2012

The petitioner completed a renewal in April 2012. During the renewal one of the petitioner's employers submitted an employment verification of earnings form stating that the petitioner earned \$21.00 per hour working 24 hours per week. The form further disclosed that the petitioner was paid weekly. The agency incorrectly counted this weekly income as monthly income.

The petitioner argues that this portion of the overpayment was caused by agency error. The petitioner's argument is that for the entire period from May 1, 2012 through October 31, 2012 the petitioner's employer submitted an employment verification form clearly stating that the petitioner is paid weekly. The agency made a mistake, and budgeted this weekly income as monthly income. Thus, this portion of the overpayment is due to agency error, rather than client error. I agree with the petitioner with regard to the portion of the overpayment from May 1, 2012 through June 30, 2012.

Having established that this portion of the overpayment is due to agency error, the remaining issue is whether the agency can establish and collect this portion of the overpayment. The agency correctly established this overpayment if the overpayment was established one year from the date of discovery. The case comments and agency's testimony is that a referral was sent to the program integrity unit on October 23, 2013. When this unit receives a referral, they investigate the referrals to determine what if any action to take. For whatever reason, the program integrity unit never investigated this October 23, 2013 referral. October 23, 2013 is the date of discovery. That is the date that the agency learned of the potential FS overissuance contained in this claim. The overpayment notice is not dated until March 2015. This is outside of the one-year time limit, and the agency cannot establish and collect this portion of the overpayment.

July 1, 2012 – October 31, 2012

When determining that this portion of the overpayment was due to agency or client error, I considered the reporting requirements. These requirements state that household must report their income exceeds 130% of the federal poverty level (FPL). *FoodShare Wisconsin Handbook (FSWH)* § 6.1.1.2. The household must report this income by the 10<sup>th</sup> of the month following the income exceeding 130% of the FPL. *Id.*

In this case the household income exceeded 130% of the FPL in May 2012. The petitioner's household size was 7. The most recent notice highlights that if the family's income goes over \$3,663.00 before taxes, the family must report the increase by the 10<sup>th</sup> day of the following month. In May of 2012 the household's gross income was \$5,773.87. The petitioner's husband received 5 unemployment checks on May 31, 2012. This caused the household income to exceed 130% of the FPL, triggering the reporting requirement. Because the petitioner failed to report her household income when it exceeded 130% of the FPL, I conclude that this portion of the overpayment due to client, not agency error.

I note that during this period, the agency continued to budget the petitioner's weekly income incorrectly. However, when the household's income increases above 130% of the FPL, the entire household is under an obligation to report their income. The report must include all of the household income. The petitioner correctly highlights that the employment verification of earnings forms are estimates of a person's income for a prospective period. When a household's income goes above 130% of the FPL, a person is obligated to report their actual income regardless of what an employment verification form states. The petitioner did not correctly report the household income, and this portion of the overpayment is due to client, not agency, error. The agency is within the proper time limits to establish this overpayment.

November 1, 2012 – April 30, 2013

The petitioner does not dispute this portion of the overpayment. She agrees that this portion of the overpayment was caused when she failed to report her employment at Silver Spring Operating on her six month report form processed by the agency on October 16, 2012. Thus, the agency correct established this portion of the overpayment.

May 1, 2013 – October 31, 2013

The petitioner argues that this portion of the overpayment is due to agency error. I agree with the petitioner with respect to the portion of overpayment from May 1, 2013 through October 31, 2013. The petitioner completed a six month review in April 2013. The petitioner's employer completed employment verification of earnings forms. One of the forms listed the petitioner's income as weekly. The agency incorrectly budgeted this income as bi-weekly income.

The petitioner was not obligated to report this mistake to the agency. Were the income budgeted correctly; the household income would have been above 130% of the FPL. If a household has reported total income exceeding 130% FPL, and the household remains open for FS due to categorical eligibility, the food unit has fulfilled their change reporting requirement for the remainder of the FS certification period. *FSWH* § 6.1.1.2. Thus, the petitioner was under no obligation to correct the agency's mistake, and this portion of the overpayment was caused by agency error. As stated above the date of discovery for this overpayment is October 23, 2013. The agency had one year from that date to establish this overpayment. The agency failed to do that here, and therefore must rescind this portion of the overpayment.

November 1, 2013 – January 31, 2014

The petitioner completed a renewal in October 2013. During the renewal period one of the petitioner's employer's submitted an employment verification of earnings form stating that the petitioner was on call, and did not earn any income in the month of September 2013. This was a true statement for September 2013. The agency processed the renewal and did budget any income from this employer. This was effective November 1, 2013, the first month following the renewal.

On October 15, 2013 the agency sent the petitioner a notice stating the amount of income budgeted, and further explaining that if the household gross income increased to over \$3,858.00, the household must report that change. This \$3,858.00 amount is 130% of the FPL for this size household at the time of the notice. The petitioner is under an obligation to report income when the income increases above 130% of the FPL.

From November 1, 2013 through December 31, 2013 the household income remained below 130% of the FPL, thus the petitioner was under no obligation to report actual income. This portion of the overpayment is due to agency, not client error. In January 2014, the household income increased above 130% of the FPL. The increase in earnings triggered the reporting requirement. The petitioner failed to report her January income. Were these changes reported in January, the changes would have been effective February 1, 2014. The January overpayment remains agency error, but the remaining portion of the overpayment from February 1, 2014 through October 31, 2014 is due to client, not agency error.

February 1, 2014 – October 31, 2014

I note that between February 1, 2014 and October 31, 2014 the household income was above 130% for all months except for April and May 2014. However, because the petitioner failed to report when the report requirement was triggered, I find that this entire period from February 1, 2014 through October 31, 2014 was due to client error. It is further important to note that the agency would have been within the year

time period to establish an overpayment from April and May 2014 even if those months were the result of agency, not client error.

### CONCLUSIONS OF LAW

1. There was an overpayment due to client error from November 1, 2011 through April 30, 2012.
2. There was an overpayment due to agency error from May 1, 2012 through June 30, 2012. The date of discovery for this overpayment is October 23, 2013. The agency must rescind this portion of the overpayment because they established it more than one year after the date of discovery.
3. There was an overpayment due to client error from November 1, 2012 through April 30, 2013.
4. There was an overpayment due to agency error from May 1, 2013 through October 31, 2013. The date of discovery for this overpayment is October 23, 2013. The agency must rescind this portion of the overpayment because they established it more than one year after the date of discovery.
5. There was an overpayment due to agency error from November 1, 2013 through January 31, 2014. The date of discovery for this overpayment is October 2014. The agency established this overpayment in March 2015. The agency is within the time period to establish an overpayment due to agency error.
6. There was an overpayment due to client error from February 1, 2014 through October 31, 2014.

**THEREFORE, it is**

**ORDERED**

That this case is remanded to the agency. The agency must rescind the three overpayments at issue in this case. The agency shall issue six new overpayment notices consistent with my above stated conclusions of law. The agency may not establish or seek collection of an overpayment for the period from May 1, 2012 through June 30, 2012 and from May 1, 2013 through October 31, 2013. The agency shall comply with this order within 10 days 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 Milwaukee,  
Wisconsin, this 4th day of June, 2015

---

\sCorinne Balter  
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 June 4, 2015.

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