



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/165495

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 16, 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 May 12, 2015, at Appleton, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare.

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: Luisa Mcky

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

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County. Petitioner's household had an open FoodShare case at all times relevant here.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated March 4, 2015. It informed Petitioner that he had been overissued FoodShare in the amount of \$978.00 for the period from May 1, 2011 through July 31, 2011. This is claim # [REDACTED].

3. The basis for this FoodShare overissuance claim was that earned income for Petitioner’s household was not reported.
4. Petitioner’s spouse began employment in March 2011 and had gross income in excess of \$4000 per month. This was not reported to the county economic support agency.
5. Petitioner’s household size was 4 – Petitioner, spouse and two children.
6. 130% of the Federal Poverty Level for a household of 4 was \$2389.00 from October 1, 2010 through September 30, 2011. *See Operation Memo, 10-68; effective October 1, 2011.*
7. Petitioner’s FoodShare case closed in July 2011; the household did not reapply.

**DISCUSSION**

The Federal regulation concerning FoodShare overpayments requires a State agency to take action 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 (FSH), §7.3.2.*

Also applicable here are the following provisions from the *FoodShare Wisconsin Handbook (FSH)*:

...  
**Client Error**  
 Establish a claim for a client error that occurred when the FS group unintentionally:

1. Failed to provide correct or complete information.
2. Failed to report a change that was required to be reported.
3. Received FS for which it was not entitled pending a fair hearing decision.

...  
*FSH, §7.3.2.1.*



*6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)*

All other food units are only required to report if their total monthly gross income exceeds 130% (8.1.1) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...  
*FSH, §6.1.1.2.*

Petitioner’s household gross income exceeded the 130% reporting threshold as of March 2011. This had to be reported by April 10, 2011 and would have affected FoodShare beginning May 1, 2011. Petitioner and spouse note that the reporting warning on the Notice of Decision was on page 4 so not prominently displayed for benefit recipient review. Regardless, the Notices contain a lot of information about a case and a recipient is responsible for knowing what is on the Notice.

I do note for Petitioner’s benefit the following *FSH* provision as to repayment of an overissuance:

**7.3.2.12 Repayments**

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.  
*FSH, §7.3.2.12.*

### **CONCLUSIONS OF LAW**

That Petitioner's household did not report earned income when that income exceeded 130% of the FPL as required and was, therefore, overissued FoodShare as alleged.

**THEREFORE, it is**

### **ORDERED**

That this appeal 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 Milwaukee,  
Wisconsin, this 10th day of June, 2015

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\sDavid D. Fleming  
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 June 10, 2015.

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