



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]

DECISION

FOP/165526

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 18, 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 benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Megan Ryan

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

*This hearing was combined with a hearing for Petitioner's spouse; nonetheless, a separate decision is required though the two cases and decisions are very similar.*

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. The agency sent Petitioner a Notice of FoodShare Overissuance dated March 17, 2015. It informed Petitioner that he had been overissued FoodShare in the amount of \$2005.00 for the period from September 1, 2011 through December 31, 2011.
3. The basis for this FoodShare overissuance claim was that income was not reported as required; more specifically, Petitioner's income increased as hours worked increase and this was not reported.

4. Petitioner's household's FoodShare eligibility was reviewed in June 2011. As part of that review the agency was informed that Petitioner was working fewer hours than he later actually worked.
5. Petitioner's spouse completed a six month report form in December 2011. At that time a wage cross match was made for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2011 and the agency discovered that income had exceeded reporting requirements.
6. Petitioner's FoodShare group size is 6 – Petitioner, his spouse and their 4 children.
7. 130% of the Federal Poverty level for a household of 6 during the time period involved here was \$2300 through September 30, 2011 and increased to \$3249 effective October 1, 2011 for the rest of the time period. *See FoodShare Wisconsin Handbook, §8.1.1, release #s 10-04 and 11-04.*
8. A July 15, 2011 Notice of Decision confirming benefits did inform Petitioner of the 130% reporting requirement and that this threshold was \$3200.00.

### 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.* Spouses must be included in the FoodShare household together. *FSH, §3.3.1.3.* And, all adult members of a household are liable for the overpayment. *FSH, §7.3.1.2.*

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.

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*FSH, §7.3.2.1.*

#### 7.3.2.1 Client and Non-client Error

When calculating the overissuance, consider the FS group's reporting requirements. Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported.

Use converted income to determine ongoing benefit eligibility for the overissuance calculation. Only use the income and expenses reported or required to be reported for each month of the overissuance period. In claim calculations, disregard income that was not previously reported and was not required to be reported.

...

*FSH, §7.3.2.1.*

As Petitioner's household is not an elderly, blind or disabled (EBD) household, the FoodShare Wisconsin Handbook (FSH) states that she had to report income at the point that household income exceeded 130% of the FPL:

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

All other food units [i.e., household's which do not have an EBD member] 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.

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*FSH, §6.1.1.2.*

This follows Federal law which directs that States may:

“...require households with income that are assigned 6-month or longer certification periods to *report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.*” 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction, 7 CFR § 273.9(d)(1);
- (2) an earned income deduction - which equals 20% of the household's total earned income (except as modified in overpayment calculations and as noted above), 7 CFR § 273.9(d)(2);
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 CFR § 273.9(d)(3);
- (4) dependent care deduction for child care expenses, 7 CFR § 273.9(d)(4); and
- (5) shelter and utility expenses deduction – the utility allowance was a standard during the time involved here and the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 CFR § 273.9(d)(5). There is a cap on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

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In overissuance calculations, do not apply the 20% earned income disregard to earned income that was required to be reported but was not reported timely. Disregard income that was not previously reported and was not required to be reported due to reduced reporting requirements. If expenses were reported correctly at the time of the overissuance, use those same expenses when calculating the overissuance. If not, then do not use the expenses in the calculation.

...

*FSH, §7.3.2.1; also see 7 CFR 273.18(c)(1)B and 7 CFR 273.120d; emphasis added.*

Reading all of the above together, Petitioner’s household did have an obligation to report employment and income in excess of 130% of the Federal Poverty level. Petitioner’s household income exceeded this amount in July 2011 and that was required to have been reported by August 10, 2011 and would have affected FoodShare benefits as of September 2011.

Petitioner’s spouse testified that it was reported that income fluctuates and that she was told that income would be averaged so she would not need to worry about it. There is no way to know what conversations occurred in 2011 or what each party’s understanding of the conversation was. It is clear, however, that the July 15, 2011 Notice of Decision does state that any income over \$3200.00 must be reported. Finally, Petitioner wonders why the overpayment was not discovered earlier. An agency may recover back six years where the required reports are not made. *FSH, §7.3.2.1.*

Finally, 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 hours worked and household income was not reported as required and Petitioner’s household was 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 30th 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 30, 2015.

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