



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

In the Matter of

Redact  
Redact  
Redact

DECISION

FOP/165817

**PRELIMINARY RECITALS**

Pursuant to a petition filed May 01, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Monroe County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on May 21, 2015, at La Crosse, Wisconsin. At the request of the parties, the record was held open for the petitioner to submit her bank information to the agency, and then for the agency and then petitioner to submit written closing argument to DHA by June 11, 2015. There is no evidence in the hearing record that petitioner submitted any bank records to the county agency. The agency submitted a closing argument to DHA which was received on June 8, 2015. The petitioner failed to submit any closing argument to DHA even by June 15, 2015. The agency's closing argument is received into the hearing record.

The issue for determination is whether the county agency is correctly seeking recovery of a \$3,138 FoodShare (FS) overpayment to the petitioner during the period of March 1, 2014 to February 28, 2015, due to her failure to accurately report her self-employment income and to report her accurate household composition (ex-husband, Redact Redact) in her household and his income resulting in a total FS overpayment for that period.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Redact  
Redact  
Redact

Respondent:

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

By: Redact, ES Supervisor  
Monroe County Department of Human Services  
Community Services Bldg.  
14301 Cty Hwy B, Box 19  
Sparta, WI 54656-4509

## ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein  
 Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [Redact]) is a resident of La Crosse County who resides with her 7 year old daughter. The petitioner receives SSI, and thus receives Medicaid benefits.
2. The petitioner's ex-husband is [Redact cRedact]. He is not the father of her daughter.
3. Petitioner was the casehead and received FoodShare (FS) benefits for a household of two during the entire period of March 1, 2014 to February 28, 2015.
4. Petitioner participated in her reviews for FoodShare and Medical Assistance as a single parent with one child, but did not report that her ex-husband, [Redact cRedact] was residing with her in her home during the period of March 1, 2014 to February 28, 2015, and thus were a FS group of three (and not two persons).
5. During her application interview process, her six month review forms (SMRFs) and during her annual reviews, petitioner maintained that she lived with only her daughter. Petitioner inaccurately claimed she only had the following income: SSI of about \$657 per month and child support of about \$248 per month.
6. On November 13, 2014, the agency received a tip indicating that petitioner was not reporting her self-employment as a DJ, known as "[Redact]". That tip also claimed that petitioner was not reporting other adults in her household. The county agency began investigating whether [Redact cRedact] resided with petitioner and her child, and that his income had not been timely reported to the county agency.
7. The investigator from Central States Investigators, [Redact], after consulting with petitioner's neighbors, reviewing documents, and interviewing petitioner determined that petitioner failed to report that [Redact cRedact] was residing in her FS household and his income, and failed to report her self-employment income as a DJ.
8. On or about February 15, 2015, the agency sent a written verification request to the petitioner requesting proof of [Redact cRedact]'s employment and income for the past year and a copy of her mortgage application (petitioner had purchased a home at [Redact] during November, 2014 with [Redact cRedact] as a co-signor).
9. The agency sent a February 17, 2015 notice to the petitioner stating that her daughter's BadgerCare (BC) benefits would discontinue April 1, 2015, due to petitioner's failure to provide requested verification of her household income and accurate household composition.
10. During the May 21, 2015 hearing, neither petitioner nor [Redact cRedact] were able to provide any reliable evidence to refute that he was residing in petitioner's home during the entire FS overpayment period.
11. The petitioner worked as a DJ earning about \$300- \$350 for a four hour job for which she is generally paid in cash, but failed to report any of that income to the agency in determining her FS or BC eligibility or benefits.
12. During the FS overpayment period, [Redact cRedact] worked as a supervisor for [Redact], and earned about \$46,000 per year
13. [Redact cRedact]'s earned income was not included in determining petitioner's FS eligibility and benefits for the entire FS overpayment period of March 1, 2014 to February 28, 2015 in large part creating petitioner's FS overpayment.

14. On April 2, 2015, the county agency sent a written Notice of FS Overissuances to petitioner informing her that she was overissued \$3,138.00 in FS benefits from March 1, 2014 to February 28, 2015, due to petitioner's failure to timely report accurate household members (Redact cRedact in the same household and his income) and failed to report her self-employment income as a DJ for the entire overpayment period.
15. Because the petitioner failed or refused to provide her reliable self-employment income to the agency, the agency determined that the petitioner's FS benefits were a total overpayment during the period of March 1, 2014 to February 28, 2015 because her total household income was not verified by petitioner.
16. As of the May 21, 2015 hearing date, petitioner did not make any payments to the county agency to reduce her FS overpayment amount.
17. The agency submitted a persuasive closing argument to DHA which was received on June 8, 2015. The petitioner failed to submit any responsive closing argument to DHA even by June 15, 2015. The agency's closing argument is received into the hearing record. See above Preliminary Recitals.

### DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). 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(a)(2)(emphasis added).

In this case, the county agency proved by the preponderance of the evidence that the basis for the overpayment was client error. The county agency correctly determined that Redact cRedact was part of the petitioner's food unit since prior to March 1, 2014, and that his income had not been used to determine her FS eligibility and benefits which, in turn, gave rise (in addition to petitioner's failure to report her self-employment income as a DJ) to the FS overpayments during the period of March 1, 2014 to February 28, 2015. The county representative indicated that petitioner was incorrectly awarded \$3,138 in FS benefits because the total accurate income of petitioner and Mr. Redact would likely have placed the household over the FS net income limit if petitioner's income had been accurately reported during petitioner's FS overpayment period.

During the May 21, 2015 hearing, petitioner and Redact cRedact did appear but their testimony was unconvincing to refute that Mr. Redact resided with the petitioner in her home during the full FS overpayment period. The petitioner testified in vague terms that Redact cRedact resided with his parents during some uncertain periods during the overpayment period. However, Mr. Redact admitted that he did not pay any rent at any other residence. The petitioner's testimony was self-serving, and not credible. The petitioner was unable to provide any reliable evidence to refute the county's case, or to indicate any error in the calculation of her FS overpayment. Neither petitioner nor Mr. Redact were able to provide any evidence to refute the documents which indicated that Redact resided with petitioner during the entire overpayment period. The petitioner was also unable to refute that she failed to timely report her self-employment DJ income to the agency.

Overall, the petitioner presented a weak, unpersuasive case. During the May 21, 2015 hearing, petitioner was unable to present any non-hearsay reliable evidence to refute or undermine the county's testimony or evidence that Mr. Redact resided with her, and she failed to report his income or her self-employment income during the entire FS overpayment period. Therefore, Mr. Redact's earned income must be budgeted as income in determining petitioner's FS eligibility. However, even as of the hearing date, petitioner

failed to reliably provide her DJ income so that the agency was unable to accurately determine the total household income. The petitioner was unable to specify any error in the county agency's calculation of the petitioner's FS overpayment amount of \$3,138. 00

The petitioner did not contest that her FS household had received FS benefits during the period of March 1, 2014 to February 28, 2015. Furthermore, the petitioner was unable to offer any reliable evidence to refute that the county agency was correctly and accurately pursuing FS overpayments against her. Finally, petitioner failed to submit any written closing argument to respond to the agency's closing argument. See above Preliminary Recitals. Nevertheless, petitioner contended that it was unfair that the county agency was seeking to recover the FS overpayment. However, 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, Appendices 7.3.1.9 and 7.3.1.1. Accordingly for the above reasons, I must conclude that petitioner was overissued a total of \$3,138 in FS benefits during the period of March 1, 2014 to February 28, 2015, due to her failure to accurately and timely report her self-employment income and to report her accurate household composition (ex-husband, Redact cRedact in her household) and his income resulting in a total FS overpayment period for that period.

### CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a total \$3,138 FoodShare (FS) overpayment to the petitioner during the period of March 1, 2014 to February 28, 2015, due to her failure to accurately report her self-employment income and to report her accurate household composition (ex-husband, Redact Redact) in her household and his income resulting in a total FS overpayment for that period.

**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 17th day of June, 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 June 17, 2015.

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