



FH

[REDACTED]

STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed August 03, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Department's Public Assistance Collection Unit (PACU) in regard to FoodShare benefits (FS), a telephonic hearing was held on September 01, 2015, at Milwaukee, Wisconsin.

The petitioners, [REDACTED], and her husband, [REDACTED] (married 12-18-2013), agreed to the consolidation of their five cases so that those cases were addressed during the September 1, 2015 hearings in the following cases: a) [REDACTED] in FOO-[REDACTED], FOP-[REDACTED], and CCO-[REDACTED]; and b) [REDACTED] in FOP-[REDACTED] and CCO-[REDACTED]. MES representative, [REDACTED], submitted a detailed closing argument regarding the three FS cases of petitioner and her husband. Neither [REDACTED] nor [REDACTED] submitted any responsive closing argument to DHA.

The issue for determination is whether the Department is correctly seeking recovery of a FoodShare (FS) overpayment of \$1,569 from petitioner during the period of August 1, 2014 through November 30, 2014, due to failure to timely report to the agency that she was married to [REDACTED], accurate household composition (her husband in her residence) and his income resulting in household income above the net income eligibility limit in some months or reduced FS in other months.

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: [REDACTED], IMM advanced  
Public Assistance Collection Unit  
PO Box 8938  
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein  
Division of Hearings and Appeals

[REDACTED]

**FINDINGS OF FACT**

1. Petitioner, [REDACTED] (CARES # [REDACTED]) is a resident of Milwaukee County who resides with her three children at [REDACTED]
2. The father of petitioner's three children is [REDACTED]. He was released from prison on December 10, 2013.
3. [REDACTED] applied for FS for a household of one on December 16, 2013 claiming to be homeless and in his own FS household. Exhibits B2 and A1. At the time of that application, [REDACTED] was the father of petitioner's child, TJ. Exhibit G.
4. The petitioner married [REDACTED] on December 18, 2013. Exhibit I.
5. The petitioner has received FoodShare (FS) benefits for many years. Exhibit A1.
6. As of December, 2013, the petitioner and her husband were claiming separate FoodShare (FS) and Child Care (CC) benefits in petitioner's Care # [REDACTED] and [REDACTED]'s Care # [REDACTED]
7. The petitioner and [REDACTED] failed to timely report to the agency their December 18, 2013 marriage, and failed to timely report that they were residing together since his release from incarceration on December 10, 2013.
8. The petitioner received W-2 benefits up to the time that her husband was added to her FS case.
9. [REDACTED]'s FS benefits should have closed by the end of December, 2013, and he should have been added to the FS household of petitioner's FS case.
10. [REDACTED] failed to report in his reviews of December, 2013, June, 2014, and December, 2014 that he resided with his wife and his income. Exhibit B1.
11. [REDACTED] failed to report in her reviews of September, 2013, February, 2014, and July, 2014 and January, 2015 that her husband resided in her household and his income. Exhibit C2.
12. The petitioner falsely stated in her February 21, 2014 and July 14, 2014 FS renewal applications that she was single (not married), and failed to report her husband residing in her household. Exhibits J and K.
13. On November 14, 2014, petitioner added her husband to her FS case. Exhibit C4.
14. During May, 2015, the Office of the Inspector General (OIG) discovered that petitioner failed to report accurate household composition (her husband in her residence) and his employment/income. OIG also discovered that petitioner incorrectly received Caretaker Supplement (CTS) benefits that she was ineligible to receive due to [REDACTED] residing in her home.
15. Neither petitioner nor [REDACTED] timely reported to the agency that [REDACTED] had the following employment: a) [REDACTED] – April 28, 2014 to November 21, 2014; b) [REDACTED] during December, 2014 and February, 2015; and c) [REDACTED] – March 25, 2015 to April, 17, 2015. Exhibit Q.
16. By June, 2014, [REDACTED] was earning enough that petitioner and he were required to report the increase in their FS household's income because it affected petitioner's FS income eligibility and/or FS benefits. Exhibit Q.
17. The following evidence supported that [REDACTED] resided in the petitioner's household since his December 10, 2013 release from incarceration: a) many petitioner postings on her Facebook page that her husband was residing with her household (Exhibit H); b) statements the petitioner and her husband made on a television show called, "the Steve Wilkos Show" regarding

residing together during the period in question; c) employment payroll records for [REDACTED] which indicate the petitioner's homes address (Ex. Q); d) employment verification and day care records which indicate they had the same home phone number for their emergency contact (Exhibit Q); e) their marriage certificate which confirmed their marriage on December 18, 2013; and f) the birth of their twins during the FS overpayment period.

18. The petitioner's FS net income limit for a FS household of three was \$1,628 as March, 2014, \$2,298 for September, 2014 which increased to \$2,326 for a FS group of five as of October, 2014.
19. The FS overpayments were correctly calculated based upon the increased household income ([REDACTED]'s earned income and unearned income, as confirmed in the FS Worksheets for petitioner and [REDACTED].
20. The Department sent a July 20, 2015 FoodShare Overpayment Notice to the petitioner stating that she received an overpayment of \$1,569.00 during the period of August 1, 2014 to November 30, 2014, due to failure to report accurate household composition and the income of her husband who resided in her household.
21. The Department sent July 20, 2015 FoodShare Overpayment Notices to [REDACTED] stating that he received a total overpayment of \$2,381.00 during the period of December 11, 2013 to June 30, 2015, due to failure to report accurate household composition (that [REDACTED] resided with his wife in her household) and his income resulting in household ineligibility (because he should have been on [REDACTED] FS case) or income above the income eligibility limits for a FS group of one. The total \$2,381 overpayment was composed of three FS overpayment periods: a) Claim [REDACTED] for \$97 from December 16, 2013 through December 31, 2013; b) Claim [REDACTED] for \$1,741 from January 1, 2014 through November 30, 2014; and c) Claim [REDACTED] for \$543 from January 1, 2015 through June 30, 2015.

### 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).

Those regulations also provide, in relevant part, as follows:

- (a) Establishing claims against households. **All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household.** The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18. The FS Handbook similarly provides that an adult is a person who is 18 years old or older and a member of the food unit at the time the overpayment occurred is liable for repayment of any overissued FS benefits. FS Handbook § 7.3.1.2. All nonexempt income must be budgeted in determining FS. 7 C.F.R. § 273.9(b).

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 [REDACTED] [REDACTED] (petitioner's husband) was part of petitioner's food unit since his December 10, 2013 release from incarceration, and that his income had not been used to determine her FS eligibility and benefits which, in turn, gave rise to the FS overpayment during the period of August, 2014 through November 30, 2014. As a result, [REDACTED] and [REDACTED] were **jointly and severally liable for this FS overpayment.** The county representative indicated that petitioner and her husband were incorrectly

awarded \$1,569 in FS benefits because the total accurate income of petitioner and [REDACTED] would have either placed the household over the FS net income limit or have reduced FS benefits during petitioner's FS overpayment period.

The county agency correctly determined that [REDACTED] was married to petitioner, 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 to the FS overpayments during the period of August 1, 2014 through November 30, 2014. The county representative indicated that petitioner was incorrectly awarded \$1,569 in FS benefits because the total accurate income of petitioner and [REDACTED] placed the household over the FS net income limit in some months or result in reduced FS benefits, if petitioner's income had been accurately reported during petitioner's FS overpayment period.

During the September 1, 2015 hearing, petitioner and [REDACTED] did appear but their testimony was unconvincing to refute that petitioner's husband resided with the petitioner during the full FS overpayment period. The petitioners argued that while [REDACTED] was married to petitioner during the overpayment period, he did not always actually reside all the time at petitioner's residence. Petitioner also alleged convincingly without any evidence whatsoever that some other person may have posted on the internet "falsified" reports about she and her husband residing continuously together during the overpayment period. Petitioner also alleged in vague terms that the marriage had been "troubled", and that [REDACTED] may have resided with his sister or friends during some uncertain periods during the overpayment period. However, the department correctly responded that a spouse must be considered in the same food unit if they live together pursuant to 7 CFR 273.1.

[REDACTED] was unable to refute 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 [REDACTED] were able to provide any evidence to refute the persuasive and substantial documents which indicated that her husband resided with petitioner during the entire overpayment period. The petitioner was also unable to refute that she failed to timely report his income to the agency.

On the other hand, the Department established with reliable evidence that petitioner and her husband failed to timely report his employment and income, failed to timely report their December 18, 2013 marriage, and failed to report that her husband was residing in his wife's household since his December 10, 2013 release from incarceration. Overall, the petitioner presented a weak, unpersuasive case. During the September 1, 2015 hearing, petitioner was unable to present any non-hearsay reliable evidence to refute or undermine the county's testimony or evidence that [REDACTED] resided with her, and she failed to report his income or her W-2 unearned income during the entire FS overpayment period. Therefore, [REDACTED]'s earned income must be budgeted as income in determining petitioner's FS eligibility.

Neither petitioner nor [REDACTED] contested that her FS household had received FS benefits during the period of August 1, 2014 through November 30, 2014. 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 and her husband. Finally, petitioner failed to submit any written closing argument to respond to the agency's closing argument. 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 \$1,569 in FS benefits during the period of August 1, 2014 through November 30, 2014, due to failure to timely report to the agency that she was married to [REDACTED]

██████████, her accurate household composition (her husband in her residence) and his income resulting in household income above the net income eligibility limit in some months or reduced FS in other months.

### CONCLUSIONS OF LAW

The Department is correctly seeking recovery of a FoodShare (FS) overpayment of \$1,569 from petitioner during the period of August 1, 2014 through November 30, 2014, due to failure to timely report to the agency that she was married to ██████████, accurate household composition (her husband in her residence) and his income resulting in household income above the net income eligibility limit in some months or reduced FS in other months.

**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 20th day of November, 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 November 20, 2015.

Public Assistance Collection Unit  
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Division of Health Care Access and Accountability