



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/168823

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 16, 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 October 08, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$2,876.00 in FoodShare (FS) benefits for the period from May 1, 2014 through December 31, 2014 due to agency error.

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: Jose Silvestre

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.

2. On July 10, 2015 the agency sent the petitioner a notice stating that she was overpaid \$2,876.00 in FoodShare (FS) benefits for the period from May 1, 2014 through December 31, 2014 due to agency error. The claim number for this overpayment was 490043884.
3. On April 11, 2014 the petitioner completed a six month renewal form (SMRF). She accurately reported her income. She provided paystubs that accurately reflected her income including her base, commissions, and paid time off. The agency only budgeted or counted the petitioner's base pay.
4. On November 25, 2014 the agency received a state wage match discrepancy showing that the petitioner was earning more money than they had budgeted. The agency requested verification of the petitioner's income from her employer. They received that verification, and between May 2014 and December 2014 the petitioner's monthly gross income was as follows: \$4,542.97 in May 2014, \$4,265.34 in June 2014, \$2,760.30 in July 2014, \$6,003.68 in August 2014, \$3,629.12 in September 2014, \$4,111.01 in October 2014, \$3,528.35 in November 2014, and \$6,214.05 in December 2014.
5. Prior to May 2014 the petitioner reported monthly childcare expenses to the agency.
6. The petitioner's monthly mortgage and taxes are \$1,572.00. She is also responsible for all of her utilities.

### 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.*

In this case the petitioner's defense was that it was the agency's fault, and therefore she should not be required to pay this overpayment. The petitioner is correct that this overpayment was caused by agency error. However, the federal regulations, which are echoed in the FS policy manual, state that the agency must establish and collect overpayments that are caused by agency error. There is a limited time in which the agency may establish and collect an overpayment due to agency error. In this case the agency is within that statutory time period.

The petitioner further raised the issue that the agency had not correctly budgeted her childcare expenses. I find the petitioner's testimony that she reported these childcare expenses to the agency prior to the overpayment period credible. The agency disputes this testimony. However, the remainder of the petitioner's testimony is consistent with the agency. This will have little impact on the amount of the overpayment. There appears to have been a lot going on with the petitioner's case, and it seems very likely that she could have reported these expenses, and that the agency inadvertently overlooked her report.

The agency did not allow for any childcare expenses to be deducted until October 2014. Originally the agency was not allowing a deduction for that month, but when calculating the overpayment, they added a deduction in the amount of \$430. In November and December 2014 the agency had originally budgeted \$860 for child expenses. They reduced that amount to \$430 when they calculated the overpayment. I am unclear the amount that the petitioner actually paid in childcare expenses during the overpayment period. The agency will need to determine the amount that the petitioner paid in childcare expenses during the overpayment period, and accurately budget those expenses. They will then need to issue a new

overpayment notice reflecting the correct childcare expenses that the petitioner paid during the overpayment period. In all other respects the agency correctly calculated the overpayment amount.

### CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was overpaid FoodShare (FS) benefits for the period from May 1, 2014 through December 31, 2014 due to agency error. The agency incorrectly budgeted the petitioner's childcare expenses in their overpayment calculation.

**THEREFORE, it is**

### ORDERED

That this case is remanded back to the agency. The agency shall determine the amount that the petitioner actually paid in childcare expenses during the overpayment period, and correctly budget that amount. They shall then issue a new overpayment notice reflecting this expense. The agency shall comply with this order within 10 days of the date of the decision. In all other respects 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).

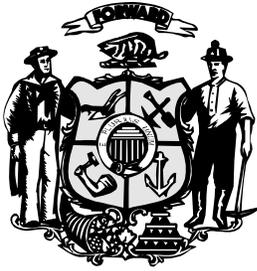
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 9th day of October, 2015

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\sCorinne Balter  
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 October 9, 2015.

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