



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/169216

PRELIMINARY RECITALS

Pursuant to a petition filed October 05, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 19, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$714.00 in FoodShare (FS) benefits for the period from March 1, 2015 through April 30, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Jeannie Ortiz

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Corinne Balter  
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Winnebago County.

2. On September 17, 2015 the agency sent the petitioner a notice stating that she was overpaid \$714.00 in FoodShare (FS) benefits for March and April 2015. The claim number associated with this overpayment is [REDACTED]
3. The petitioner and the father of her child were living together in the same home in March and April of 2015.
4. In February 2015 the petitioner reported that the father had moved out of the home. This was not true. The father did not move out of the home until the end of April 2015. This was after the agency issued complete FS benefits for March and April 2015.
5. The household's monthly gross income in March 2015 was \$3,148.96. In April 2015 the household's monthly gross income was \$3,207.78. When calculating the overpayment the agency deducted \$163.63 as an earned income deduction, \$155 as the standard deduction, and \$342.92 for child support. The family was not eligible for a shelter deduction because half their adjusted gross income did not exceed their shelter costs. Given these calculations the household was not eligible for FS benefits during March and April 2015.
6. The petitioner received \$357.00 in monthly FS benefits in March and in April 2015. The totals \$714 in FS benefits.
7. On October 7, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### 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. All adult household members are liable for an overpayment. *FSH*, §7.3.1.2.

The petitioner argues that she is not responsible for this overpayment because she never received the FS benefits. She testified that she was in an abusive relationship, and in the heat of an argument her boyfriend had her call and report that he had moved out of the house. He had not moved out of the house. He then called the agency and had his own FS and child care cases open with the child on his case. This allowed for the maximum amount of benefits given that his income was lower than the petitioner's income. She argues that because everything was under his name, she never received or used the benefits at issue in this appeal. Therefore she believes that she should not be responsible to pay back these benefits.

All adult household members are responsible for a FS overpayment. It does matter who used the benefits because they were living together in the same household. I note that the petitioner also knew that she had reported her boyfriend out of the home, when in fact he was in her home. She never called the agency at a later time to say that he had forced her to do this in the middle of a fight. Even I believed the petitioner, I have no equitable authority. Given the facts of this case, the petitioner is legally responsible for the FS overpayment. Therefore, I must conclude that the agency correctly established this overpayment.

The petitioner does not dispute the amount of the overpayment or the agency's calculations. I have reviewed the calculations, and the calculations are correct.

**CONCLUSIONS OF LAW**

The agency correctly determined that the petitioner was overpaid \$714.00 in FoodShare (FS) benefits for the period from March 1, 2015 through April 30, 2015.

**THEREFORE, it is**

**ORDERED**

That the petition 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 23rd day of November, 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 November 23, 2015.

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