



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/170750

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 11, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 17, 2016, at Madison, Wisconsin.

The issue for determination is whether the agency erred in its determination of petitioner's liability for a \$9,025 overissuance of FoodShare in claims [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

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]  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. Petitioner's wife [REDACTED] was the case head of a FS case including petitioner and their children in a household.
3. From 2012 to 2015 petitioner's wife submitted falsified Employer Verification Forms to the agency. The forms indicated an income for petitioner in amounts around \$500 to \$1,500 when petitioner's actual income was between \$4,000 to \$6,000.
4. The agency eventually determined that the income reported in a state wage record from the employer was inconsistent with the amounts reported by the household.
5. The agency sought income information from the employer directly and determined that the actual income earned far exceeded the reported income.
6. From 2012 to 2015 FS benefits were paid out during various periods based on falsified Employer Verification Forms submitted to the agency.
7. The agency used the income reported by the employer to determine eligibility for benefits issued notices informing petitioner of his liability for determination of petitioner's liability for a \$9,025 overissuance of FoodShare in claims [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].
8. Petitioner appealed.

### DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). 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(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, § 7.3.1.2:

*All adult or emancipated minors that were included in the household or should have been included in the household at the time the overpayment occurred are liable for the repayment of the overissuance of FS benefits. If a liable member moves to another household, responsibility of the overpayment is maintained and follows that individual to the new household.*

*Liability for a FoodShare overpayment is not split evenly among liable parties. Liable individuals are responsible for 100% of the overpayment until the full debt is repaid in full.*

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

The agency alleges that petitioner was part of the household receiving benefits under his wife's name. During the pertinent time periods, the agency argues that both Foodshare and BadgerCare benefits were overpaid due to the agency's reliance on falsified income documents provided to the agency. The agency argues that petitioner's income far exceeded the amount that was reported to the agency on numerous employer verification forms. The agency explained that after the agency sought and received income data directly from the employer it calculated the overpayments based on the employer-reported data. The agency's case was detailed and well-documented.

At hearing, the petitioner did not dispute the fact of the overpayments or the amounts overpaid as calculated by the agency. The only argument raised by petitioner is that he did nothing wrong and was not aware of his wife's fraud. He appeared to concede, however, that his wife had committed intentional misrepresentation in order to obtain public benefits for the family to which it was not entitled. Petitioner explained that he worked very long hours and was simply unaware of how the family was obtaining the MA and FoodShare it was using. But, as stated above, all adults in a FS household at the time of an overpayment are liable for the overpaid amounts. Liability is not based on fault. In this case, the petitioner and his children all benefitted from the overpaid benefits and petitioner was an adult in the household. Under the rules, there is no basis to find petitioner not liable for the overpaid FS.

Petitioner's mother also testified and mentioned that her son's wife moved from the household in March 2014. But, petitioner himself did not testify to this fact. In fact, petitioner offered nearly nothing in the way of detail or legal basis for his non-liability. Petitioner offered no documentary evidence of his wife leaving the household. This vague assertion is insufficient to rebut the allegations of the Department and are only relevant to the period following that date if the household was not using the benefits. There was no evidence or suggestion that this was so.

### CONCLUSIONS OF LAW

The agency did not err in its determination of petitioner's liability for the \$9,025 overissuance of FoodShare in claims [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

**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 Madison,  
Wisconsin, this 7th day of March, 2016

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\sJohn P. Tedesco  
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 March 7, 2016.

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