



FH  
[REDACTED]

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

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/171966

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 08, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a telephone hearing was held on March 08, 2016.

The issue for determination is whether the respondent correctly established an overpayment of FS benefits to petitioner.

There appeared at that time 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]  
Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. The county agency discovered that an error had occurred with respect to petitioner's FS benefits because the petitioner failed to report income.

3. On January 25, 2016, the county agency issued a Notification of FS Overissuance to petitioner (Claim No. [REDACTED]) informing that she was overissued \$2,044 in FS benefits from March 1, 2015 to June 30, 2015, due to client error, failure to report income correctly. (Exhibit 11).
4. On February 8, 2016, petitioner filed an appeal with the Division of Hearings & Appeals.

### 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 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).

At hearing, the county worker proved with a preponderance of the evidence that an overpayment occurred because petitioner's income was not correctly reported, and therefore not correctly budgeted to determine the household's FS benefits.

At the hearing, petitioner did not contest that she failed to properly report her income and/or that the county agency calculations were incorrect. Rather, she indicated that her income should be recalculated due to the fact that she was the victim of theft during the overpayment period; she asserts that her losses should be deducted from her income as a result. However, federal regulations do not allow for such deductions to income. This is especially true here, where petitioner's allegations have not been proven in court. I acknowledge petitioner's testimony that she did not report this theft due to fears of retaliation. However, even if it was within my jurisdiction to order a recalculation based upon theft, I would be unable to do so based upon the untested evidence presented. Accordingly, I must conclude that petitioner was overissued \$2,044 of FS benefits which are subject to recovery.

The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant her relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, she is not eligible for the requested deduction to her calculated income; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law.

**CONCLUSIONS OF LAW**

Petitioner was overissued \$2,044 of FS benefits which are subject to recovery.

**NOW, THEREFORE, it is ORDERED**

That the matter herein be and 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 28th day of March, 2016

---

\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 28, 2016.

Rock County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability