



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



**DECISION**  
Case #: FOP - 175745

**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 23, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Brown County Human Services regarding the overpayment of FoodShare benefits (FS), a hearing was held on August 24, 2016, by telephone.

The issue for determination is whether the county agency correctly determined that the petitioner was overissued a total of \$1,155 in FS benefits due to a client error in failing to report household income exceeding program limits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By:   
Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Brown County. She was the casehead of a FS household 4 persons in October, 2013.
2. The petitioner married  on October 5, 2013. See, Exhibit #12.

3. The petitioner affirmatively reported the marriage to [REDACTED] to the county agency on December 12, 2013, during a re-certification renewal phone interview. See, Exhibit #12, *Case Comments*, entry for 12/12/2013. They were living together in a household with three minor children, i.e., a 5 person household.
4. On November 12, 2014, the agency worker recorded in *Case Comments*, in the part relevant here: “[REDACTED] is on maternity leave from [REDACTED] and will be going back in January – told her to call CIC when she does.” See, Exhibit #12, *Case Comments*, entry for 11/12/2014.
5. On April 10, 2015, the agency processed the petitioner’s Six Month Report Form. She had been on maternity leave and not working, and did not report any new employment for herself individually. See, Exhibit #12, *Case Comments*, entry for 4/10/2015.
6. On September 23, 2015, the agency worker record in notes that the petitioner called to complete a missed review appointment, and petitioner reported that she is “still empl at [REDACTED].” The worker noted that she updated income and “[REDACTED] reports she went back to work from maternity leave early jan. this was not reported timely.” She further recorded, in the parts relevant here, “\*\*\*cic\*\*\* did explain to [REDACTED] that agency may be looking into possible fs o/p as she failed to report her return to empl timely. she did complete an access smrf in april 2015 and never reported this. [REDACTED] understood. Emailed ongoing case wrkr of possible o/p.” See, Exhibit #12, *Case Comments*, entry for 09/23/2015.
7. There is no other reported contact from the petitioner in the ongoing *Case Comments* for her case between November 12, 2014, and September 23, 2015, in which she informs the agency that she has returned to work at [REDACTED] from maternity leave. See, Exhibit #12. There was no affirmative report that she had returned to work at [REDACTED] until the September 23, 2015, contact, eight months after she had returned to work. See, Exhibit #12.
8. The agency subsequently verified the petitioner’s earnings from [REDACTED] and for her husband’s earnings from at least three employers, and child support payments of record in the KIDS database, for the period May – October, 2015, using May as the first month her income would have affected her household’s FS if she had correctly reported going back to work in the April 10, 2015, Six Month Report Form. See, Exhibits #13, attached verifications from [REDACTED] ([REDACTED]), [REDACTED] ([REDACTED]), [REDACTED] ([REDACTED]), and [REDACTED] ([REDACTED]); and se, Exhibit #14.
9. On June 8, 2016, the county agency issued a FoodShare Overpayment Notice to the petitioner, with a copy addressed to [REDACTED] individually as well, informing each that they were overpaid \$208 of Food Share benefits in December, 2013, due to a Client Error in failing to report household income exceeding program limits; and they were jointly liable for this sum. See, Exhibits #10 & #6, respectively. The agency also sent a copy of a computational worksheet demonstrating the overpayment. See, Exhibit #14.
10. Also on June 8, 2016, the county agency issued a FoodShare Overpayment Notice to the petitioner, with a copy addressed to [REDACTED] individually as well, informing each that they were overpaid \$947 of Food Share benefits from May - October, 2015, due to a Client Error in failing to report household income exceeding program limits; and they were jointly liable for this sum. See, Exhibits #9 & #7, respectively. The agency also sent a copy of a computational worksheet demonstrating the overpayments in this period. See, Exhibit #14.

11. On July 23, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting both overpayment determinations of June 8, 2016.

### 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, Appendix 7.3.1.2.

In this case the overpayment consisted of benefits that the county agency determined to have been overpaid in two short time periods due to reporting errors.

First, the agency said that the petitioner did not report her marriage to [REDACTED] until December 12, 2013, over two months after the event on October 5, 2013. Agency records bear out that the first recorded reference to her husband occurred on that December date. The *FoodShare Wisconsin Handbook*, provides as follows:

#### **6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)**

All other food units are only required to report if their total monthly gross income exceeds 130% ([8.1.1](#)) of the FPL for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

If a food unit has reported total income exceeding 130% of the FPL for their food unit size, and the food unit remains open for FoodShare due to categorical eligibility, the food unit has fulfilled their change reporting requirement for the remainder of the FoodShare certification period.

The 130% of the FPL reduced reporting level is based on the food unit size determined at the most recently completed certification.

However, if any change is reported or becomes known to the agency, it must be acted upon.

What this means in this context is that if a (non-elderly blind or disabled) household's income would go above 130% of the Federal Poverty Level due to one of these changes, then that change must be reported. Otherwise, it is not required. Here, when [REDACTED]'s gross income was drawn into the FS household in the December, 2013, budget, it shot over the gross income limit to \$6,777.58, far, far in excess of the program limit of \$3,976. See, Exhibit #14, p.1., column for December, 2013.

The petitioner testified that [REDACTED]'s income was already reported to the agency prior to the marriage.

That is not sufficient to rebut the agency showing. No entry in Case Comment nor any change report exist showing that the petitioner reported the person add to the FoodShare case until the December 12, 2013, phone interview. I can only conclude that this part of the overpayment, i.e., the \$208 overpayment assessed in December, 2013, was correctly determined on the facts in this record. Nor has the petitioner pointed to any computational error.

As to the second part of the overpayment, this recovery of \$947 arises from the petitioner's failure to affirmatively report her return to work from maternity leave. Agency *Case Comments*, and the April 10, 2015, SMRF, clearly establish that the petitioner did say in early November, 2014, that she would be off work on maternity leave, and would return to work in January, 2015 from that leave. But the records also clearly show she was told she needed to report to the agency *after* she actually went back to work. The records further demonstrate that she canceled a re-certification review in early January, 2015; did not report her return to work in the April 10, 2015, SMRF; and further failed to report this fact until September 23, 2015, *eight months after she returned to work*. All the while, she is collecting FS benefits from \$87 to \$223 per month. And again, she was required to reported because household income rocketed into the \$6,000+ per month gross income range, far, far above the then 6-person household net income limit of \$2,665, which is based upon the Federal Poverty Level. The limit was at 200% FPL, or \$5,430 for 6 persons. The change reporting threshold was 130% of the Federal Poverty Level, or \$3,529 for a 6-person household. See, *FoodShare Wisconsin Handbook*, § 8.1.1.

Saying that you *will* return to work in two months is not the same thing as reporting within 10 days after going back to work that you *actually have* gone back to work. And that is the duty of the recipient in the FoodShare program. The petitioner's argument holds no merit. The household was overpaid in the period of May – October, 2015, as well, and this conclusion is supported by evidence far above the mere preponderance of the evidence standard applicable in these administrative hearing cases.

### CONCLUSIONS OF LAW

The petitioner was overpaid \$1,155 in FoodShare benefits, i.e., \$208 in December, 2013 (FS Claim No. [REDACTED]) and \$947 in the period of May – October, 2015 (FS Claim No. [REDACTED]), due to client errors in reporting household composition and income information.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be, and the same hereby 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, **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 September, 2016

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Kenneth D. Duren  
Administrative Law Judge  
Division of Hearings and Appeals

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

ves, Administrator

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t to the following parties on September 7, 2016.

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and Accountability