



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FOP - 200707

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 8, 2020, under Wis. Admin. Code, §HA 3.03, to review a decision by the La Crosse County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on January 6, 2021, by telephone.

The issue for determination is whether the agency correctly determined an FS overpayment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED]  
La Crosse County Dept. of Human Services  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner received FS for a four-person household in 2018, 2019, and 2020. In September, 2018, petitioner reported her out-of-pocket child care expense of \$756.80 monthly. That amount was added as an expense to petitioner's FS budget.

3. Then in October, 2018 petitioner became eligible for child care assistance. The worker did not remove the out-of-pocket child care expense from petitioner's FS budget. The expense continued to be part of petitioner's FS budget until September, 2020.
4. The agency discovered the error during a renewal on September 29, 2020. Petitioner had no child care expenses since January, 2019.
5. The agency determined that petitioner was overpaid \$4,587 in FS from October 15, 2019 through September 30, 2020, due to agency error. Although the error started earlier, agency error overpayments can be recovered only for the twelve months prior to discovery.
6. Petitioner was notified about the overpayment, claim no. [REDACTED], but a letter dated October 16, 2020.

### 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.

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).

Out-of-pocket child care expenses are a deduction in FS calculations. The agency acknowledged that the worker erred by failing to remove the expense when petitioner became eligible for child care assistance. Mr. [REDACTED] calculated the overpayment as required by the federal regulation cited above. Obviously, removing a \$756 monthly deduction would have impacted the FS allotments drastically. I can find no error in the actual FS overpayment calculation.

Petitioner argued that it is unfair for her to have to repay the state for an error its worker made. Unfortunately, the federal FS law requires recovery even in instances of agency error. The one mitigating factor is the one-year lookback limit. I note that while the error was primarily made by the agency, petitioner could have caught it herself. The June, 2019 notice of decision, marked as Exhibit I in the agency package, shows a \$756.80 child care expense. I acknowledge that petitioner probably did not even notice the expense on that letter, but it was evidence that the agency had erroneous information in its system.

My authority is limited to determining if there was an overpayment and whether it was calculated correctly. I can find no authority allowing me to reduce or write off the claim due to hardship or inability to pay. The Department might have that authority; the Division of Hearings and Appeals does not.

### CONCLUSIONS OF LAW

The agency correctly determined that petitioner was overpaid FS in 2019 and 2020 due to agency error.

**THEREFORE, it is**

**ORDERED**

That the petition for review 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, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, 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.

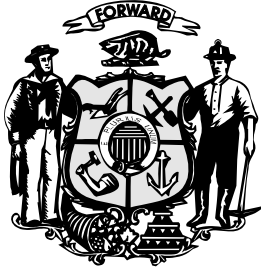
## APPEAL TO COURT

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 8th day of January, 2021

\s \_\_\_\_\_  
Brian C. Schneider  
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 January 8, 2021.

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