FH
[redacted]

# STATE OF WISCONSIN
# Division of Hearings and Appeals

In the Matter of

[redacted]

**DECISION**
Case #: FOP - 203706

## PRELIMINARY RECITALS

Pursuant to a petition filed on November 11, 2021, under Wis. Admin. Code §HA 3.03, to review a decision by the Kenosha County Human Service Department regarding FoodShare benefits (FS), a hearing was held on December 16, 2021, by telephone. During the hearing, Petitioner requested that the record be held open for 7 days in order to allow her to submit letters from her daughter's schools confirming that she was the sole guardian of her daughter and that her daughter attended school virtually. The request was granted, Petitioner timely submitted the documents, and they are now part of the record.

The issue for determination is whether the agency correctly determined that Petitioner received $2888.00 in FS benefits that she was not eligible to receive and is therefore required to repay.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: [redacted]
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:
Nicole Bjork
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Illinois.
2. On September 27, 2019, Petitioner applied for FS benefits. She resided in Wisconsin at that time and reported that her minor daughter also resided with her. She further reported that her daughter's father was an absent parent.
3. On October 10, 2019, the agency sent Petitioner a notice informing her that she was approved to receive FS benefits based on the information that she provided in her application. The notice further provided her with her reporting requirements.
4. The agency became aware that Petitioner's daughter was also receiving FS benefits in Illinois under her father's case. The agency further contacted [redacted] regarding Petitioner's daughter and was informed that she was not enrolled in that school. No evidence was presented regarding why the agency believed Petitioner's daughter was enrolled in that particular school. The agency further obtained documentation that Petitioner's daughter was enrolled in school in Illinois.
5. On September 21, 2021, the agency sent Petitioner two notices informing her that she received FS benefits that she was not eligible to receive. The first notice was for $1,127.00 in FS benefits for the period between February 1, 2020 through August 31, 2020 due to her daughter receiving FS benefits during that time in Illinois on her father's case. The second notice was for $1761.00 in FS benefits that Petitioner received between September 17, 2020 through August 31, 2021 due to her daughter receiving benefits during that time in Illinois on her father's case. The agency alleged that these duplicative benefits were due to Petitioner's error in not informing the agency that her daughter resided in Illinois with her father.
6. Petitioner filed a timely appeal of the overpayments. Petitioner testified that she raised her daughter by herself and that the father has never helped with her daughter. Petitioner testified that she resided in Wisconsin during the alleged overpayment periods but moved to Illinois in August 2021. Petitioner further testified that her daughter was enrolled in school in [redacted], Illinois during the period in question because that is where Petitioner's mother lived and she used her mother's address for enrollment. However, Petitioner noted that school was virtual for that period and her daughter attended virtually. Petitioner testified that she was homeless while in Wisconsin during much of the period in question and that [redacted] would not enroll Petitioner's daughter because she was homeless. Petitioner testified that she then did the best she could and enrolled her daughter virtually in school in Illinois because she was able to use her mother's address. However, Petitioner testified that her daughter remained with her in Wisconsin during the entire overpayment period.
7. Petitioner submitted letters from her daughter's schools verifying that Petitioner was listed as the guardian on all school records and that Petitioner's daughter attended school virtually during the overpayment period.

## DISCUSSION

The agency 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 or even if the client error was unintentional. 7 C.F.R. §273.18(b)(3). Agency error recovery is limited, however, to the period of one year prior to discovery of the overpayment. All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FoodShare Wisconsin Handbook, §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).

In a fair hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. To meet its burden, a preponderance of the evidence in the record must support the agency's contentions. In this case, the agency determined that Petitioner's daughter was not residing with her in Wisconsin during the period in question and, thus, Petitioner should not have received FS benefits for her daughter during that time. Further, school records obtained by the agency demonstrate that Petitioner attended school in Illinois, not Wisconsin. In order to meet its burden, the agency must establish by a preponderance of the evidence that Petitioner's daughter resided in Illinois with her father during the period in question.

The only evidence presented by the agency to establish that Petitioner's daughter resided in Illinois is that she received benefits on her father's case in Illinois and that she was enrolled in school in Illinois. No evidence was presented that Petitioner's daughter ever lived with her father, even though he claimed her to receive FS benefits. The school records do not list Petitioner's daughter's father as her primary guardian. No records or any evidence indicates that she resided with her father. Rather, the evidence submitted indicates that Petitioner's daughter resides with her.

Petitioner testified that her daughter has only resided with her and that the father has never provided assistance for their daughter. The father claiming Petitioner's daughter to obtain FS benefits is not evidence that their daughter actually resided with him.

The agency further noted that Petitioner's daughter was enrolled in school in Illinois during the period in question. This fact is undisputed by Petitioner, who fully admits she enrolled her daughter in virtual school in Illinois because her school district in Wisconsin would not enroll her since they were homeless and without an address. Petitioner's testimony was corroborated by the Illinois school letters confirming that Petitioner's daughter was enrolled during the periods in question, that Petitioner was the only guardian noted, and that Petitioner's daughter attended school virtually. Petitioner further noted that she used her mother's address (a [redacted], Illinois address) to enroll her daughter into school, which was also confirmed by the school letters.

Therefore, the evidence in this case indicates that Petitioner's daughter resided with her during the period in question and therefore, correctly received FS benefits for her during that time period.

## CONCLUSIONS OF LAW

The agency incorrectly determined that Petitioner's daughter resided in Illinois and therefore incorrectly determined that Petitioner received $2888.00 in FS benefits between February 1, 2020 through August 31, 2021 that she was not eligible to receive.

## THEREFORE, it is ORDERED

That within 10 days of the date of this decision, the agency cease all attempts to collect the FS overpayments under claim numbers [redacted] and [redacted].

## 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 5th Floor, 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.

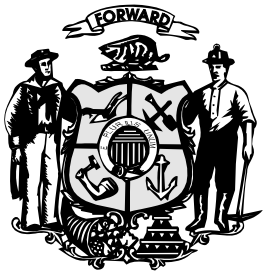
## APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 11th day of January, 2022

\s_____
Nicole Bjork
Administrative Law Judge
Division of Hearings and Appeals

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The preceding decision was sent to the following parties on January 11, 2022.

Kenosha County Human Service Department
Public Assistance Collection Unit
Division of Health Care Access and Accountability