



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FOP - 204086

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on January 4, 2022, under Wis. Admin. Code §HA 3.03, to review a decision by the Rock County Human Services Department regarding FoodShare benefits (FS), a hearing was held on February 9, 2022, by telephone.

The issue for determination is whether the agency properly found that Petitioner was overpaid \$969 of FS benefits for the time period April 1, 2019 to June 2019 and \$2,052 of FS benefits for the time period August 2019 through January 2020 due to client error.

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, WI 53703

By: [REDACTED]  
Rock County Human Services  
1900 Center Avenue  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County who received FoodShare (FS) as part of a two-member household from at least December 2018 through June 2019 and from

- August 2019 through January 2020. [REDACTED], her former spouse, was the primary person of that FS household.
2. On November 9, 2018, the agency mailed Petitioner's household an "About Your Benefits" notice which indicated they were eligible for \$353 of FS as of December 2018 and that the only monthly income the agency had on file for the household was \$853.78 in combined Social Security and SSI benefits paid to [REDACTED]. The notice further stated, in relevant part, "If your household's total monthly income (before taxes) goes over \$1,784, you must report it by the 10<sup>th</sup> day of the next month."
  3. Petitioner became employed by [REDACTED] (also known as [REDACTED]) on January 13, 2019 and continued working there through June 23, 2019. Her gross monthly income from [REDACTED] in 2019 was: \$282.44 in January, \$1,249.73 in February, \$1,479.91 in March, \$1,320.79 in April, \$1,916.82 in May, and \$1,182.32 in June, and \$79.04 in July.
  4. Petitioner was employed by [REDACTED] from June 24, 2019 through at least January 2020. Her gross monthly income from [REDACTED] in 2019 was: \$3,342.67 in July, \$2,765.24 in August, \$2,647.71 in September, \$3,087.17 in October, \$5,004.10 in November, and \$2,822.18 in December. Her gross monthly income in January 2020 was \$2,913.12.
  5. [REDACTED] filed an on-line six month report form (SMRF) to continue the household's FS benefit on July 13, 2019. On that form, he indicated that Petitioner had former employment with [REDACTED] (i.e., [REDACTED]). This was the first time the agency was notified that Petitioner had been employed with [REDACTED].
  6. [REDACTED] did not list income from [REDACTED] or any other household income on the SMRF filed in July 2019. The agency first received information indicating that Petitioner was employed at [REDACTED] on or about December 4, 2019 via a SWICA wage match report.
  7. [REDACTED] had monthly combined Social Security and SSI income \$874.78 from at least April 2019 through January 2020.
  8. On November 19, 2021, the agency sent Petitioner two FoodShare Overpayment Notices and worksheets that indicated that she and [REDACTED] [REDACTED] had been overpaid \$969 of FS benefits for the time period April 1, 2019 to June 2019 and \$2,052 of FS benefits for the time period August 2019 through January 2020.
  9. Petitioner filed a timely appeal.

### DISCUSSION

The federal regulations that govern the FoodShare ("FS") program require the agency to take action to establish a claim against any household that received an overpayment of FS regardless of whether that overpayment occurred as a result of an inadvertent household error (also known as a "client error") or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); FoodShare Wisconsin Handbook, (FS Handbook) § 7.3.2. Overpayments due to "agency error" may be recovered if they were issued during the twelve months prior to the date the agency discovered the overpayment. FS Handbook, § 7.3.2.1. Overpayments due to "client error" may be recovered if they were issued during the six years prior to the date the agency discovered the overpayment. Id.

FoodShare households are typically required to report to the agency when total monthly gross income increases to an amount that exceeds 130% of the Federal Poverty Level (FPL). FS Handbook, Release 18-04, §6.1.1. Such a change must be reported by the 10th of the month following the month in which increase occurs. Id. at §6.1.1.2. From October 2018 through September 2019, 130% FPL for a two-member household was \$1,784. Id. at 8.1.1. As of October 1, 2019, that amount increased to \$1,832. Id. at 8.1.1.

Here, the agency offered documentation including pay records from both Petitioner's employers (i.e., [REDACTED] / [REDACTED] and [REDACTED]) that established Petitioner's total gross monthly income exceeded 130% FPL from February 2019 through June 2019 and again from August 2019 through January 2020. Petitioner and, [REDACTED], who appeared with her at hearing, did not dispute the accuracy of those records. The agency also offered CARES case comments that do not include any notation documenting a report from Petitioner or [REDACTED] that their household exceeded the income reporting limit in February 2019. The agency also offered a copy of a SMRF submitted in July 2019 showing that Petitioner's new job at [REDACTED] was not accurately reported.

CLAIM NO. [REDACTED] (APRIL 2019 THROUGH JUNE 2019)

Petitioner testified that she submitted paystubs from [REDACTED] in August 2019 when the agency requested them. The agency did not dispute that. However, as the agency representative pointed out at hearing, by the time Petitioner provided those paystubs her job at [REDACTED] had already ended and she had already received benefits to which she was not entitled. Petitioner objected to the length of time that passed from when the agency discovered that overpayment to the date the agency established the overpayment claim. While her frustration regarding the delay is understandable, relevant FS program policy in effect through November 30, 2021 permitted agencies to recover benefits that were overpaid due to client error up to six years prior to the date of the discovery of that overpayment. Here, the overpayment was established on November 18, 2021 and the overpaid benefits were paid during the allowable "lookback period."

CLAIM NO. [REDACTED] (AUGUST 2019 THROUGH JANUARY 2020)

[REDACTED] testified that he called the telephone number on the back of his household's EBT card to cancel their benefit after Petitioner began working at [REDACTED] in June 2019. However, as noted above, he submitted a SMRF in July 2019 to continue the household's FS eligibility and failed to list [REDACTED] or any other current employment on that SMRF.

For the reasons set forth above, I find that a preponderance of the credible evidence in the record demonstrated that the household was overpaid from April 2019 through June 2019 and from August 2019 through January 2020 due to client error.

Petitioner did not dispute that she was overpaid FS benefits nor did she identify any specific errors in the calculation of the overpayment amount. Nevertheless, I reviewed the agency's calculations and found no error.

### CONCLUSIONS OF LAW

Petitioner was overpaid \$969 of FS benefits for the time period April 1, 2019 to June 2019 and \$2,052 of FS benefits for the time period August 2019 through January 2020 due to client error and is liable to repay those sums.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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, 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

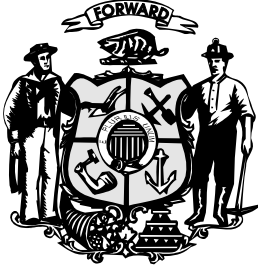
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 10th day of February, 2022



\s \_\_\_\_\_  
Teresa A. Perez  
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 February 10, 2022.

Rock Cty Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability