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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/142745

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 31, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on November 05, 2012, at Janesville, Wisconsin.

The issue for determination is whether the Department erred in its denial of FoodShare eligibility for petitioner based on the Department's determination that petitioner's husband is part of the Food Unit.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Pam Edmonds

Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner was on ongoing FS recipient.

3. Her husband lives away from the home (where the couple's children live) during the week. He returns on at least some weekends.
4. The Department had previously not been counting the substantial income of the husband as part of the food unit income.
5. On June 6, 2012, an investigator wrote a report that concluded that the husband has been staying with his parents during the week because it is close to his work. "He goes home every weekend or when he is off. He does pay the mortgage payment and fully supports the family"
6. On July 10, 2012, the Department sent a notice to petitioner informing her that effective August 1, 2012 the family would no longer be eligible for FS.
7. Petitioner filed a timely appeal.

### DISCUSSION

In this case, the Department offered no witnesses. The husband did not testify. The investigator's report indicates that the investigator spoke with [REDACTED] a neighbor. He did not testify. An anonymous neighbor also is mentioned in the report as having provided information. This anonymous neighbor did not testify.<sup>1</sup> The husband's mother, who is also named in the report, also did not testify. The investigator did not testify. The Department representative instead offered the written report as the evidence to overcome the vocal denials of the petitioner who appeared in person.

Specifically, the Department sought to prove that the husband and wife and children are a stable family unit who only live apart some of the time due to convenience pertaining to the husband's work location. Petitioner countered that the husband is estranged and they are filing for divorce. She claims that the husband has come home to sleep only occasionally over the course of months. She firmly maintained that the husband provides her only with support in the form of paying the \$1,200 mortgage.

The written report on which the Department relies is hearsay. I am unable to assess the credibility or biases of those who the investigator claims she spoke with. They did not appear and could not be cross-examined. Does each have reason to lie? I have no idea and cannot explore that. Furthermore, the investigator herself did not appear. I cannot place weight in an investigative report when the investigator similarly cannot explain the basis for her report and its conclusions. Without her appearing before me, I am unable to determine whether she purports to be an objective fact-gatherer or a partisan witness who included only selective facts in her report. For example, why would the investigative report concluded that the husband "does pay the mortgage *and fully supports the family*" when the only item in the report that this conclusion could be drawn from is petitioner's own statement that he pays the mortgage. If this is the case, then on what basis did the investigator conclude that he "fully supports the family"? I could not ask her as she did not appear. It really does not matter as her testimony regarding these allegations would have been hearsay just as much as the report is hearsay.

In circumstances such as these, when the reliability and probative force of hearsay evidence is suspect and that hearsay evidence is to form the sole basis for a finding of fact, the Wisconsin Supreme Court has held that uncorroborated hearsay does not constitute substantial evidence upon which to base a finding of fact. *Gehin v. Wisconsin Group Ins. Bd.*, 2005 WI 16, ¶¶ 53-56 & 58, 278

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<sup>1</sup> I note to the Department and its investigators that it would be the rare occasion, if ever, that I would place any evidentiary weight whatsoever in hearsay information provided by an anonymous source for the purposes of a DHA hearing. I mention this because it seems that every other investigative report includes such information.

Wis. 2d 111, 692 N.W.2d 572; See also, *Williams v. Housing Auth. of City of Milwaukee*, 2010 WI App 14, ¶¶ 14 & 19, 323 Wis. 2d 179, 187 & 189, 779 N.W.2d 185 ("[u]ncorroborated hearsay evidence, even if admissible, does not by itself constitute substantial evidence."). In these circumstances the Wisconsin Supreme Court has held that hearsay must be corroborated by nonhearsay evidence. *Gehin*, ¶¶ 82 & 92. I cannot make a finding of fact that the husband is part of the food unit based solely on the hearsay report. The case law prohibits me from doing so in this case because the Department offered no corroboration. The only corroboration for the assertions in the report was supplied by the testimony of the petitioner herself.

Ultimately then, the only substantial evidence I have to consider in support of findings of fact relating to the husband's living circumstances is the testimony provided by petitioner herself. She testified that her husband pays \$1,200 of support to the family in the form of the mortgage payment. She stated he provides nothing else. I must accept this assertion as correct because the Department evidence does not adequately dispute this.

It may be that the husband and petitioner are indeed living together happily. I cannot make a finding one way or the other based on the evidence in the record. If the Department were to present substantial and persuasive evidence at a hearing, an ALJ could uphold a termination. But, based on the evidence here, I can only find support by the husband to the extent that petitioner admitted it. That is \$1,200 per month.

### **CONCLUSIONS OF LAW**

The Department erred in terminating benefits based on the husband (and his income) being part of the food unit.

**THEREFORE, it is**

**ORDERED**

This matter is remanded to the Department and its county agency with instructions to redetermine eligibility and monthly allotment for the group using the amount of \$1,200 of support from the husband to the food unit that does not include the husband. If appropriate, eligibility should be reinstated retroactive to August 1, 2012 and any appropriate supplements should be issued retroactive to that date. These actions must be completed within ten days.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of November, 2012

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John P. Tedesco  
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 November 7, 2012.

Rock County Department of Social Services  
Division of Health Care Access and Accountability