



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/145333

PRELIMINARY RECITALS

Pursuant to a petition filed November 15, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on December 12, 2012, at Milwaukee, Wisconsin. With petitioner's consent, the record was held open for 10 days to allow respondent time to submit documentation. No such documentation was received.

The issue for determination is whether respondent correctly added [REDACTED] to petitioner's Medical Assistance (MA) case.

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: Alma Lezama

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. [REDACTED] was added to petitioner's MA case effective November 1, 2012, following an investigation completed by O'Brien & Associates on September 6, 2012.
3. Petitioner objected to the investigation's finding that Mr. [REDACTED] resided at her address, and she filed an appeal of the addition of Mr. [REDACTED] to her MA case on November 15, 2012.

DISCUSSION

Respondent indicates that its determination as to Mr. [REDACTED]'s residential address is based upon the following:

1. Inconsistent statements received from Mr. [REDACTED] during the investigation by O'Brien & Associates;
2. Mr. [REDACTED] and petitioner use the same P.O. box address; and
3. Mr. [REDACTED] answered the door at petitioner's address on September 6, 2012.

Exhibit 2.

The respondent did not produce anyone from O'Brien & Associates to testify regarding the investigation into Mr. [REDACTED]'s residence. The investigation report was not entered into evidence; in fact, the only document submitted by the respondent was an Appeal Summary, consisting of a single, half-page paragraph. Despite a request that the respondent submit further information to substantiate its position, and the respondent's assurance that it would provide further information, no documentation was produced.

Petitioner claims that she has not lived with Mr. [REDACTED] for at least three years. She testified that she does allow him to use her P.O. box, as she understands that he is presently homeless.

The respondent has the burden of establishing that it correctly added Mr. [REDACTED] to petitioner's case. I cannot find that it has met that burden based on the scant evidence before me. The respondent's entire case rests upon an investigation by O'Brien and Associates. The investigator allegedly spoke with various individuals during the course of the investigation. However, none of those individuals, including the investigator, testified at the hearing. "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted." Wis. Stat. §908.02(3). "A 'statement' is (a) an oral or written assertion...of a person, if it is intended by him as an assertion." Wis. Stat. §908.01(1). The longstanding rule in Wisconsin is that findings of fact cannot be based entirely on uncorroborated hearsay. *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987); and see *Outagamie County v. Town of Brooklyn*, 18 Wis. 2d 303, 312 (1962).

In this case there is no non-hearsay evidence to support the agency's case. The three bases for respondent's determination, set out above, may constitute grounds for an assumption that Mr. [REDACTED] is residing with petitioner. However, I have absolutely no documentation or testimony establishing that the Appeal Summary's description of the O'Brien & Associates investigation is even accurate, and an assumption does not provide proper basis for a determination of fact. Based on the utter lack of substantive testimony or evidence, I must remand this to the respondent to remove Mr. [REDACTED] from petitioner's MA case.

CONCLUSIONS OF LAW

The respondent incorrectly added [REDACTED] to petitioner's MA case, as it failed to establish that [REDACTED] was residing with petitioner.

¹ Mr. [REDACTED] is referred to at times as petitioner's husband. The record does not contain any verification of the marital status of petitioner and/or Mr. [REDACTED]

THEREFORE, it is

ORDERED

That the matter be remanded to the respondent with instructions to remove [REDACTED] from petitioner's MA case. The agency shall do so within 10 days of this decision.

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 28th day of January, 2013

\sPeter McCombs
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 28, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability