



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOP/145771

PRELIMINARY RECITALS

Pursuant to a petition filed December 07, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare (FS) benefits, a hearing was scheduled for January 3, 2013. Following the granting of petitioner's request to reschedule, a hearing was held on January 17, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in finding that petitioner is liable for an overissuance of FS benefits due to her failure to report that her husband, JS, was living with her.

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: Katherine May

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. Petitioner resides with her minor children, and holds title to her home in her name alone.

2. The agency seeks to recover \$8,449.00 in FoodShare provided to the petitioner because it contends that she was residing with her husband during the overpayment period. The alleged overpayment consists of three claims:
- | | | | |
|----|------------|---------------------------------|------------|
| a. | ██████████ | October, 2006 – September, 2007 | \$3,168.00 |
| b. | ██████████ | August, 2010 – July, 2011 | \$4,092.00 |
| c. | ██████████ | February, 2012 – August, 2012 | \$1,189.00 |
3. Petitioner did not reside with her husband during the alleged overpayment periods identified at Finding of Fact 2, above.
4. Respondent notified petitioner of the alleged overpayment via written Notices of FoodShare Overpayment dated November 14, 2012. Exhibit 4. Petitioner filed a timely request for hearing on December 7, 2012.

DISCUSSION

Federal regulations require state agencies to “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. The amount of a FoodShare allotment depends upon net income and the number of persons in the household. The county agency contends that the petitioner received \$8,449.00 more FoodShare benefits than she was entitled to receive because she was residing with her husband, JS, and she never reported that he was living with her.

Petitioner contests that her husband lived with her during any of the overpayment periods, though she concedes that he has continued to use her address for mailing purposes during the last six years. She described a very tumultuous relationship, and testified that they have separated and reunited several times since moving to the Milwaukee area in 2006. She further indicated that she had not previously reported the times that her husband returned to the home because she never received benefits during the times that he resided in her home.

The respondent presented an investigative report prepared by O’Brien and Associates, a private investigation company. The primary non-documentary evidence consists of a statement from a neighbor indicating that the petitioner and her children lived with JS at the ██████████ address for “about 5 or 6 years now.” Exhibit 4. No one from O’Brien and Associates appeared at hearing to testify regarding the report, and the respondent conceded that it would not rely on the investigative report in proving its case.

Instead, the respondent testified that it determined that petitioner and JS were living together based upon documents from the Wisconsin Circuit Court Access (CCAP) website, Wisconsin Voter Public Access website, White Pages website, Wisconsin Department of Transportation website, and the City of Milwaukee Municipal Court website. Each of these sites indicates that JS was using petitioner’s ██████████ address. Unfortunately, only one website includes date information that corresponds with an overpayment period identified at Finding of Fact 2, above. The CCAP website printouts provided by respondent show JS using the ██████████ address on October 29, 2010, and December 4, 2010.¹ This would at least coincide with the overpayment claim identified at Finding of Fact 2(b), though it only addresses a few months out of an entire year period. The remaining documents either contain no address, or reference dates falling outside of the alleged overpayment periods. Arguably, these documents actually corroborate petitioner’s testimony that she did not seek benefits during the periods that she and JS were reconciled and living together.

¹ The dates that I note are taken from the “Address Updated On” field. See, Exhibit 4.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action. Having opted to not rely upon the investigative report prepared by O'Brien and Associates,² and rely solely on documentation gleaned from the Internet, I conclude that the respondent has failed to meet its burden in establishing the overpayments identified at Findings of Fact 2(a) and 2(c).

While it has only barely established a basis for the claim identified at Finding of Fact 2(b), I am persuaded that petitioner has successfully rebutted this claim. Petitioner testified credibly that her husband and some of his family members continue to use her address for their mail, despite her objections. While corroboration of petitioner's statement would be helpful, I do not find it unreasonable for JS to have continued using petitioner's mailing address during the past several years when he has been living in multiple locations, including, at times, petitioner's home. Petitioner's fluid living situation may have raised the suspicions of the respondent, but, based upon the evidence before me I cannot find that the respondent has established that JS and petitioner lived together during the overpayment periods claimed by respondent.

CONCLUSIONS OF LAW

The county agency has not proven by the preponderance of the credible admissible evidence that the petitioner received an overissuance of FoodShare benefits, because it has not established that she lived with JS during the alleged overpayment periods.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that, within 10 days of the date of this decision, it rescind any liability of the petitioner pertaining to the FoodShare Overissuance claims identified as follows:

- | | | | |
|----|------------|---------------------------------|------------|
| a. | ██████████ | October, 2006 – September, 2007 | \$3,168.00 |
| b. | ██████████ | August, 2010 – July, 2011 | \$4,092.00 |
| c. | ██████████ | February, 2012 – August, 2012 | \$1,189.00 |

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.

² Where 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 such a finding. *Gehin v. Wisconsin Group Ins. Bd.*, 2005 WI 16, ¶¶ 53-56 & 58, 278 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.

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 18th day of February, 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 February 18, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability