



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/154368

PRELIMINARY RECITALS

Pursuant to a petition filed December 15, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Monroe County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 03, 2014, at Sparta, Wisconsin.

The issue for determination is whether the Department met its burden of establishing the \$2,367 overissuance of FoodShare (FS).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Mr. Tom Miller

Monroe County Department of Human Services
Community Services Bldg.
14301 Cty Hwy B, Box 19
Sparta, WI 54656-4509

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.
2. Petitioner received FS in the past.
3. The agency initiated a fraud investigation in 2013.

4. O'Brien and Associates private investigators conducted an investigation on behalf of the agency.
5. On September 19, 2013, investigator ██████ wrote an investigative report that described his actions with regard to his investigation.
6. Mr. ██████ did not appear as a witness at hearing.
7. It is unclear from the documentary evidence who calculated the amount of the overpayment. No witness appeared to explain how such calculation was performed or why it should be relied upon.
8. None of the people Mr. ██████ spoke with as part of his investigation appeared as witnesses at hearing.
9. Petitioner disputed the conclusion of Mr. ██████ and many of the facts he relied upon to reach his conclusions.

DISCUSSION

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 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 regarding employment, income or residence based solely on the hearsay investigative report. I must have other nonhearsay corroboration in order to make such a finding of fact.

In this case, the only witness appearance was by Mr. Miller. He did not conduct the investigation and did not calculate the overpayment. The agency relied upon O'Brien for those functions. Mr. Miller explained that O'Brien is no longer contracted by the agency and refuses to appear at these hearings. I would suggest that the agency could elect to subpoena the investigators. But, the testimony and work demonstrated by O'Brien historically has been so substandard that I am not sure that it would be worth the trouble.

CONCLUSIONS OF LAW

The Department did not meet its burden of establishing the overissuance because the only evidence was hearsay.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to reverse this overissuance and cease all collection efforts. And sums already recouped shall be refunded. These actions must be completed within 10 days of this decision.

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, 5005 University Avenue, Suite 201, 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, Madison, Wisconsin 53703, **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 17th day of March, 2014

\sJohn 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 March 17, 2014.

Monroe County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability