



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154738

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Lafayette County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 20, 2014, at Darlington, Wisconsin.

The issue for determination is whether the respondent erred in its termination of FoodShare eligibility for petitioner based on the Department’s determination that petitioner’s mother is part of the Food Unit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Hal Menendez
31 South Mills Street
Madison, WI 53715

Respondent:

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

By: Janet Popp

Lafayette County Department of Human Services
627 Main Street
Darlington, WI 53530

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

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

3. Petitioner's mother resides in [REDACTED], Wisconsin. She visits petitioner almost daily and occasionally spends the night at petitioner's residence in [REDACTED], Wisconsin.
4. On November 12, 2013, an investigator wrote a report that concluded, among other things, that petitioner and his mother have resided in [REDACTED] together for at least two years, and that petitioner's mother pays the rent and utility bills for petitioner's [REDACTED] residence.
5. Petitioner's mother pays for a [REDACTED] Post Office box, which petitioner uses as his mailing address.
6. On November 14, 2013, the respondent sent a Notice of Action and Proof Needed to petitioner, indicating that petitioner needed to provide his mother's social security number and date of birth, due to its determination that she resided with petitioner. This information was due on November 25, 2103. Exhibit P-1.
7. On November 18, 2013 the Department sent a notice to petitioner informing him that effective December 1, 2013 his FS benefits would be ending due to his failure to complete his renewal.
8. Petitioner filed a timely appeal on January 10, 2014.

DISCUSSION

To ensure that FoodShare eligibility decisions are based on accurate information, recipients must verify certain information. 7 CFR § 273(f)(1). Agencies must deny benefits to those who refuse to cooperate with completing the application process, which includes verification. 7 CFR § 273.2(d).

The respondent asserts that an investigation determined that petitioner and his mother resided together, and as a result of that determination, petitioner was required to verify his mother's social security number and date of birth in order that she could be added to his FS case. Said verification was requested on November 14, 2014, and had a due date of November 25, 2013. Four days later, the respondent sent written notification to petitioner indicating that his FS would terminate as of December 1, 2013, due to his failure to complete his renewal. Based upon the termination notice, the petitioner did not submit the requested verification. I find it reasonable that petitioner understood that his FS was going to be terminated, and that the verification was no longer required. The November 25, 2013, notice makes no mention of the outstanding verification request, and specifically states:

Your [FS] benefits will be ending on December 01, 2013. ...

...Your renewal has not been completed. If you have not started your renewal and want to keep getting this benefit, contact your agency before the end of this month.

Exhibit P-2.

Petitioner testified that he did contact the respondent. He was allegedly informed that the respondent had determined that his mother resided with him, and that her income would need to be included for FS budgeting purposes.

At hearing, the respondent sought to prove that the petitioner and his mother have resided together for the last two years. The respondent's case relies entirely upon the investigative report and conjecture. The petitioner and his mother both credibly testified that they do not reside together, though they do spend a good deal of time together. They each additionally testified that they do not purchase and prepare, and have not purchased and prepared, meals together, nor do they customarily eat together.

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. Furthermore, the investigator himself did not appear. I cannot place weight on an investigative report when the investigator cannot explain the basis for his report and its conclusions. Without him appearing before me, I am unable to determine whether he purports to be an objective fact-gatherer or a partisan witness who included only selective facts in his report.

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 non-hearsay evidence. *Gehin*, ¶¶ 82 & 92. I cannot make a finding of fact that the petitioner's mother 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 substantiated corroboration.¹ The only true corroboration for the assertions in the report was supplied by the testimony of the petitioner and petitioner's mother.

Ultimately then, the only substantial evidence I have to consider in support of findings of fact relating to the petitioner's FS household is the testimony provided by petitioner and petitioner's mother. Both testified that they live apart, do not purchase and prepare food together, and do not customarily eat together. The respondent's representative conceded that she never sought to verify the information revealed by the aforementioned testimony. I must accept the assertions of petitioner and his mother as correct because the respondent's evidence does not adequately dispute them.

Based upon the record before me, I conclude that the respondent has not established that it properly terminated petitioner's FS based upon petitioner's failure to verify that his mother resided with him.

CONCLUSIONS OF LAW

The respondent erred in terminating petitioner's FS based upon petitioner's failure to verify that his mother resided with him.

THEREFORE, it is

ORDERED

This matter is remanded to the Department and its county agency with instructions to re-determine eligibility and monthly allotment for the petitioner's single-person FS household. If appropriate, eligibility should be reinstated retroactive to December 1, 2013. All actions required by this Order shall be completed within ten days following issuance 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.

¹ The respondent's representative did testify that she had contacted the [REDACTED] Post Office, and was informed that petitioner's mother has a [REDACTED] mailing address (PO Box). Petitioner's mother subsequently testified that she pays for petitioner's PO Box.

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 18th day of April, 2014.

\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 April 18, 2014.

Lafayette County Department of Human Services
Division of Health Care Access and Accountability
Attorney Hal Menendez