



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/155028

PRELIMINARY RECITALS

Pursuant to a petition filed January 23, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Columbia County Health & Human Services in regard to FoodShare benefits (FS), a hearing was held on February 19, 2014, at Portage, Wisconsin.

The issue for determination is whether the Department established the liability of petitioner for a \$4,427 FoodShare overissuance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Melissa Duane

Columbia County Health & Human Services
2652 Murphy Rd
PO Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Columbia County.
2. The Department's contracted private investigator firm, O'Brien and Associates, conducted an investigation into the FS eligibility and related disbursements to petitioner. Investigator [redacted]

█████ wrote a report in which he described his Internet searches relating to addresses used by ██████████. ██████ also described conversation with neighbors and petitioner's landlord. O'Brien calculated an overissuance of FS in the amount of 4,427 for the period from 11/19/12 to 10/31/13 based on its conclusion that ██████ lived in the home though it was not reported to the agency.

3. At hearing, petitioner disputed that ██████ lived in her home during this period.
4. The Department issued a Notification of FS Overissuance to petitioner.
5. Petitioner appealed.
6. The O'Brien investigator who wrote the investigative report did not testify at hearing.
7. None of the neighbors testified at hearing.
8. The landlord did not testify at hearing.
9. The O'Brien investigator who calculated the overissuance did not testify at hearing.

DISCUSSION

It has become almost automatic for me to cite *Gehin* and *Williams* in any FS overissuance case in which O'Brien and Associates has conducted the investigation. I do not know if anyone at the counties or the Department has read any of the numerous decisions in which I cite these cases. 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. This is the law of the State of Wisconsin as set forth by the Supreme Court of this state. An ALJ does not have discretion to disregard it.

In this case, there was no testimony other than the statements of the agency representatives. They did not conduct the interviews, reach any independent conclusions, or calculate the overissuance. They merely offered the O'Brien report. This is hearsay upon hearsay. There is no substantial evidence that has been presented upon which I could possibly make a finding that ██████ lived in the home at any particular time. On this evidence, the agency could not possibly meet its burden.

CONCLUSIONS OF LAW

The Department failed to meet its burden to establish that there was a FS overissuance or the amount of such overissuance, if any.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent with instructions to reverse the determination of the FS overissuance and to cease all collection efforts related to that determination. Any sums already recouped shall be reimbursed to petitioner. These actions shall 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 21st 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 21, 2014.

Columbia County Health & Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability