



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/155030

PRELIMINARY RECITALS

Pursuant to a petition filed January 23, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Polk County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on February 20, 2014, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of FoodShare that allegedly occurred because her mother's boyfriend refused to verify his income.

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: Diana Peterson

Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.
2. The county agency seeks to recover \$1,867 in FoodShare provided to the petitioner's household from April 2012 through February 2013 because her mother's boyfriend refused to verify his income.

3. The petitioner was at least 18 from April 2012 through February 2013.
4. The county agency's entire case, including all documents, was prepared by O'Brien & Associates. No one from O'Brien appeared at the hearing.

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. To ensure that 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 petitioner lives with her mother. Two years ago, soon after the petitioner turned 18, her mother's boyfriend moved in. The agency eventually asked to verify his income. When he refused to cooperate, the agency concluded that the household was not entitled to benefits and sought to recover the \$1,867 in FoodShare it contends the household received from April 2012 through February 2013. Children under 22 who live with a parent must be considered as part of the parent's food stamp household. 7 CFR § 273.1(a)(2)(B). In addition, those responsible for repaying an overpayment include "[e]ach person who was an adult member of the household when the overpayment...occurred. 7 CFR § 273.18(a)(4)(i). Based upon the petitioner was an adult under 22 years old, the agency seeks to recover the overpayment from her.

The problem with the agency's case is that it is entirely hearsay. It relied upon O'Brien & Associates, a private investigative firm, to develop the evidence, but no one from that firm appeared. The worker who did appear had no knowledge of the case other than that O'Brien had concluded there was an overpayment. The petitioner herself knows nothing of the finances of her mother's household, including how much she received in FoodShare each month. The rules of evidence generally do not apply to administrative hearings. Wis. Stat. § 227.45. Nevertheless, administrative decisions cannot be based solely upon uncorroborated hearsay. *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987). Our state supreme court reinforced this principle in *Gehin v. Wisconsin Group Insurance Board*. 2005 WI 16, a decision that overturned a finding based upon untestified to medical records that were contradicted by petitioner's sworn testimony. The court's rationale is that "the purpose of allowing the admission of hearsay evidence is to free administrative agencies from technical evidentiary rules, but at the same time this flexibility does not go so far as to justify administrative findings that are not based on evidence having rational probative force." *Id.* at ¶54. The records developed by O'Brien & Associates do not fall into the business records exception to the hearsay rule because they were made in anticipation of litigation. Because the agency's case rests solely upon uncorroborated hearsay, it cannot recover the alleged overpayment of FoodShare.

CONCLUSIONS OF LAW

There is no admissible evidence that the petitioner received an overpayment of FoodShare.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions to end its attempts to recover from the petitioner the alleged \$1,867 overpayment of FoodShare that occurred between April 2012 through February 2013. Nothing prevents the agency from attempting to recover this overpayment from the petitioner's mother or her mother's boyfriend.

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, Room 651, 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 21st day of February, 2014

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 21, 2014.

Polk County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability