



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/158443

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 18, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to Medical Assistance, a hearing was held on July 14, 2014, at Friendship, Wisconsin.

The issue for determination is whether the agency met its burden of proving the MA overpayments in claims [REDACTED] (\$1,866.09) and [REDACTED] (\$106.28).

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: Mary Donohue

Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Adams County.
2. On May 30, 2014, the agency issued MA Overpayment Notices [REDACTED] (\$1,866.09) and [REDACTED] (\$106.28).

3. Petitioner appealed.

### DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

The agency contends that petitioner was not living in Wisconsin during the period of the overpayment and was, thus, not eligible to receive benefits from Wisconsin. As proof of the residence contention, the agency provided a written statement from [REDACTED] who reported that she pays rent to petitioner and has lived in the home on [REDACTED] in [REDACTED] for 4 years. The note was dated 12/27/13. At hearing, petitioner conceded that she did not live in this home but lived in other places and with relatives and friends. The petitioner's reliance on things like where she gets mail is misplaced. She must be an actual resident of the state to get benefits. But, petitioner concedes that the [REDACTED] note is correct. This does not persuade me that she did or did not live in Wisconsin – only that she did not live at this particular house in [REDACTED].

The agency also provided a copy of a private investigator report including a purported statement from petitioner admitting that she was living with her brother and her mother in [REDACTED] during the overpayment period of October 2013 to May 2014. But, at hearing, the petitioner stated otherwise. She asserted that some of the time she actually was in the state of Wisconsin. The investigator did not appear at the hearing. I have no way of knowing if the report is reliable or not.

Petitioner lost any credibility she had at hearing by her repetitive argument relating to all the mail she receives at [REDACTED] and all the accounts indicating that address as hers. She even referred to [REDACTED] at one point as her "personal residence." But, later in the hearing petitioner conceded that she has not lived in that home for years.

Though I found petitioner not credible, the fact remains that the agency's case rests only on hearsay. No witness testified that petitioner lived outside the state. I have been asked to believe and rely on things written by people who did not appear at the hearing to clarify the written word. I do not know if the O'Brien investigator is competent, or credible. 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.

### CONCLUSIONS OF LAW

The agency failed to meet its burden of proving that petitioner was not a resident of Wisconsin during the overpayment period.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the Department and its county agent with instructions to reverse to medical assistance OP finding, cease any collection efforts, and return any sums already recouped to petitioner. These actions must be completed within 10 days.

**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 11th day of August, 2014

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\sJohn P. Tedesco  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 11, 2014.

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