



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact Redact
Redact
Redact

DECISION

MOP/161937

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on December 03, 2014, at Friendship, Wisconsin.

The issue for determination is whether the agency met its burden that it correctly established the MA overpayment claims Nos. Redact, Redact, Redact, and Redact.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Respondent:

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

By: Redact
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Adams County.
2. Petitioner applied for MA on 3/6/13. On this application, petitioner did not include her husband, Redact. Redact's income was not budgeted for the household. Petitioner was enrolled.

3. The agency conducted an investigation into the household composition and whether [Redact] was, in fact, living in the home.
4. [Redact] was determined by the investigator to have used the family home address for various purposes including vehicle registration, credit reports, voter records, and employment records with [Redact]'s employer.
5. The investigator concluded that [Redact] had lived in the home during all pertinent periods of alleged overpayment.
6. The agency issued an MA Overpayment Notice dated 10/1/14 indicating overpayment of \$2,134.00 for the period from 3/1/13 to 2/28/14.
7. The agency issued an MA Overpayment Notice dated 10/1/14 indicating overpayment of \$345.00 for the period from 6/1/13 to 2/28/14.
8. The agency issued an MA Overpayment Notice dated 10/1/14 indicating overpayment of \$60.00 for the period from 3/1/14 to 8/31/14.
9. The agency issued an MA Overpayment Notice dated 10/1/14 indicating overpayment of \$1,448.00 for the period from 3/1/14 to 8/31/14.
10. Petitioner filed a timely request for hearing.

DISCUSSION

The Department witnesses testified that this overpayment was calculated due to [Redact] [Redact] being part of the MA household, though petitioner did not report this. The Department alleges that [Redact] was living in the home and earning income that would have reduced or terminated MA benefits. It follows, according to the Department, that petitioner then received more MA benefits than she was otherwise entitled to receive.

This case raises recurring issues that this Division has seen in MA overpayment appeals. The first is one relating to the presentation of hearsay evidence; the second is the weight of that evidence.

HEARSAY

As for the hearsay issue, 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. Indeed, it 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, the only witness for the agency was the investigator who supported the case with public records. At the time of the hearing, the Department did not offer any other evidence to corroborate these assertions. This evidence is hearsay and cannot alone support a finding of fact that [Redact] lived in the household.

WEIGHT OF EVIDENCE

First of all, the Department has the burden to prove the basis for, and the correct calculation of the overpayment. Hearsay is often interrelated with weight of evidence. Hearsay, by its nature, is a statement of a person outside of the hearing. Most often in cases such as this one, the hearsay is offered because the witness does not actually appear for the hearing, or because the evidence is solely documentary in nature.

The Department must prove that [Redact] lived in the home with the petitioner. Instead, what the Department has shown is that [Redact] has used the family address on various forms and for certain official purposes. The evidence does not prove that his income was shared by the family or that he ate meals with the family or that he slept in the home.

I found petitioner not credible. But, that does not obviate the legal requirement that the agency meet its burden of proof. Some non-hearsay evidence is needed in a case like this and that evidence can be corroborated by all the documents. But there must be some minimal non-hearsay evidence. In this case, with petitioner disputing all allegations, and the agency failing to call any witnesses who could place [Redact] in the home (which would have included [Redact] himself based on the agency's case), there was none.

CONCLUSIONS OF LAW

The Department failed to meet its burden to establish the overissuances.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agency with instructions to reverse the overissuance determinations in MA overpayment claims Nos. [Redact], [Redact], [Redact], and [Redact], that it cease all collection efforts, and that it return any funds already recouped, if any, from petitioner in satisfaction of these claims. 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 8th day of January, 2015

\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 January 8, 2015.

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