FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact

DECISION

FOP/162730

PRELIMINARY RECITALS

Pursuant to a petition filed December 16, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 06, 2015, at Madison, Wisconsin. The record was held open for 1 day for the submission of additional information by the respondent, which was received.

The issue for determination is whether the county agency correctly determined that the petitioner was overpaid FS benefits due to client error in failing to report her household members accurately.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

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:
Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Redact) is a resident of Dane County. Petitioner resides with her four children at Redact Redact. LD is the father of three of petitioner's children.

2. Petitioner submitted a six month report form (SMRF) to the respondent on or about June 1, 2012, indicating that LD was not a member of her household. Exhibit D1.

3. Petitioner called the respondent on June 4, 2012, indicating that LD was not a member of her household. Exhibit E1.

4. LD's employer, Redact, reported that LD commenced employment on June 27, 2014, and LD reported his address as Redact Redact. Exhibit C1.

5. Petitioner submitted a SMRF to the respondent on or about January 8, 2013, and later completed FS renewals on July 9, 2013, January 23, 2014, and August 6, 2014, each time excluding LD as a member of her household. See, Exhibits D2, E2 and E3.

6. LD commenced employment with Redact on May 24, 2013, and LD reported his address as Redact Redact. Exhibit C1.

7. On December 5, 2014, the respondent sent petitioner FoodShare Overpayment notices identifying the following claims:

3900421043	7/1/12 – 1/31/13	$1,515.00
4900421044	8/1/13 – 7/31/14	$4,501.00
5900421045	8/6/14 – 12/31/14	$1,426.00

The notices indicating that the reason for the overpayment was petitioner's failure to report accurate household composition. Exhibit A1.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, § 7.3.2.1. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FS Handbook, § 7.3.2.1.

Federal FS law and state FS rules generally require that parents and their minor children residing together must be included in an FS group for determining eligibility and the amount of FS. 7 C.F.R. §273.1(a)(2)(B); FS Handbook, § 3.31.2. A recipient is required to report any change to household composition within 10 days.

The respondent maintains that the petitioner did not report the father of her children living in her home. As such, the issue here is whether or not LD resided with petitioner and his children during the alleged overpayment time periods. The petitioner concedes that the respondent resided with her for a time, but has not lived with her since March of 2012. The earliest overpayment time period commences in July, 2012

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

The agency representative provided a copious amount of paperwork in an attempt to establish that LD did, in fact, reside with petitioner since at least July of 2012. The respondent offered testimony indicting that this investigation came about due to LD's apparent failure to correctly report his wages. This investigation, in turn, led to the determination that LD had identified petitioner's address as his address with four distinct employers. See, Exhibits C-1 – C-4. The respondent also provided police records pertaining to LD and petitioner, Child Support evidence, Dane County Housing Authority documents, FS usage information and Facebook postings to establish its proposition that LD resided with petitioner during the overpayment periods. See, Exhibits F1 – F13.

I cannot base my decision solely upon these documents because they are hearsay, and in many instances there are multiple layers of hearsay. 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.

In this matter, there does exist some non-hearsay evidence that the petitioner and LD lived together. The petitioner noted that LD was no longer residing with her as of June, 2012, but LD continued to use her address for years. In addition, petitioner admits that LD is regularly at her residence, as he remains involved with his children. The respondent has also submitted FS usage information demonstrating that LD's FS usage has occurred almost exclusively in Redact, and LD and petitioner have used their cards simultaneously. See, Exhibits F-7 and F-8.

Ultimately, I cannot conclude that the non-hearsay evidence is sufficiently corroborative of the hearsay evidence. The respondent could have but did not subpoena witnesses to substantiate the numerous hearsay documents. The respondent further testified that LD was not interviewed as part of its overpayment investigation, nor was any surveillance done of petitioner's home to otherwise verify LD's residence.

The petitioner has consistently maintained and has testified that LD has not resided with her since early 2012. She stated that while LD may have been homeless, he lives with other women at times. Petitioner further stated that she is presently in relationship with another individual (not LD). She also noted that the FS posting regarding her relationship, including a purported marriage to LD, were posted to make another individual jealous. This assertion was not contested by the respondent, nor was any evidence presented to establish that LD and petitioner are, or ever were married.

I conclude that the respondent has failed to meet its burden of proof to establish that LD and the petitioner have resided together since July, 2012. The vast majority of petitioner's case consists of uncorroborated hearsay. While this is a very close case, the evidence before me does not sustain the respondent's conclusion that petitioner received an overpayment of FS benefits.

CONCLUSIONS OF LAW

The respondent has failed to meet its burden of proof to establish that LD and the petitioner have resided together since July, 2012.

THEREFORE, it is **ORDERED**

That this matter is remanded to the respondent with instructions that, within 10 days of the date of this decision, it take all steps necessary to rescind the petitioner's liability for the following overpayments:

3900421043	7/1/12 – 1/31/13	$1,515.00
4900421044	8/1/13 – 7/31/14	$4,501.00
5900421045	8/6/14 – 12/31/14	$1,426.00.

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 27th day of January, 2015.

_____

\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 January 27, 2015.

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