



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FOO/162732

PRELIMINARY RECITALS

Pursuant to a petition filed December 16, 2014, under Wis. Admin. Code § HA 3.03(1), 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 the petitioner's FS allotment and eligibility.

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:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Dane County.

2. Petitioner (CARES # [Redact]) is a resident of Dane County. Petitioner resides with her four children at [Redact Redact Redact]. LD is the father of three of petitioner's children.
3. 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.
4. Petitioner called the respondent on June 4, 2012, indicating that LD was not a member of her household. Exhibit E1.
5. LD's employer, [Redact], reported that LD commenced employment on June 27, 2014, and LD reported his address as [Redact Redact]. Exhibit C1.
6. 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.
7. LD commenced employment with [Redact Redact Redact] on May 24, 2013, and LD reported his address as [Redact Redact]. Exhibit C1.

DISCUSSION

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a). The generic household definition requires that household members "live together" and "purchase and prepare" meals together. This definition does not solve the problem posed by this case, because the petitioner asserts LD does not "live" with her and does not customarily purchase food and prepare meals with her and her children. See, "*Special household requirements*", at 7 C.F.R. § 273.1(b).

In a Fair Hearing concerning the propriety of a discontinuance or reduction of benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was proper. The petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the discontinuance action was required.

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, and still does. 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 resides with petitioner. 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 could have but did not interview LD as part of its investigation, nor was any surveillance done of petitioner’s home to otherwise verify LD’s residence there.

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 reside together, and that LD must be included in petitioner’s FS household. 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’s FS household consists of 6 people.

CONCLUSIONS OF LAW

1. The respondent has failed to meet its burden of proof to establish that LD and the petitioner have resided together since July, 2012.
2. LD is not a member of petitioner’s FS household.

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 remove LD from petitioner’s household, and review and re-determine petitioner’s FS allotment from the date that LD was added to petitioner’s household, going forward.

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

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 January 27, 2015.

Dane County Department of Human Services
Division of Health Care Access and Accountability