



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:



DECISION

FTI/164026

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dane County Department of Human Services [“County”] in regard to FoodShare benefits [“FS”], a Hearing was held via telephone on April 14, 2015. At petitioner’s request a Hearing scheduled for March 10, 2015 was rescheduled.

The issue for determination is whether it was correct to establish the following 2 Claims against petitioner for overpayments of FS for the time period September 1, 2010 to June 30, 2012 in the total amount of \$9,493.00:

Claim Number [REDACTED]; September 1, 2010 to August 31, 2011; \$3,553.00 (\$1,039.00 of that amount has already been repaid); and,

Claim Number [REDACTED]; September 1, 2011 to June 30, 2012; \$5,940.00 (that amount has already been repaid in full).

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

BY: [REDACTED], Overpayment Specialist
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 25 years old) is a resident of the State of Georgia; petitioner's last name at birth was "Hale". Exhibit #4.
2. The following 2 Claims were established against petitioner for overpayments of FS for the time period September 1, 2010 to June 30, 2012 in the total amount of \$9,493.00:
 Claim Number [REDACTED]; September 1, 2010 to August 31, 2011; \$3,553.00 (\$1,039.00 of that amount has already been repaid); and,
 Claim Number [REDACTED]; September 1, 2011 to June 30, 2012; \$5,940.00 (that amount has already been repaid in full).
 Exhibits #1, #8 & #9.
3. Petitioner was sent a computer-generated *Notification of FS Overissuance* notice dated May 3, 2013 relating to FS overpayment Claim Number [REDACTED] in *Findings of Fact #2*, above; petitioner never received that notice because it was sent to an address where he never lived. Exhibits #7, #7A & #8.
4. Petitioner was sent another computer-generated *Notification of FS Overissuance* notice dated May 3, 2013 relating to FS overpayment Claim Number [REDACTED] in *Findings of Fact #2*, above; petitioner also never received that notice because it was sent to an address where he never lived. Exhibits #7, #7A & #8.
5. A written notice from State of Wisconsin, dated July 11, 2014 and entitled *Important Notice About Your State Tax Refund and Credits*, concerning the 2 FS overpayment Claims in *Findings of Fact #2*, above, was sent to petitioner at an address where he did not live; petitioner never received that notice. Exhibits #1, #7 & #7A.
6. Petitioner was not the casehead of the FS household where the 2 FS overpayment Claims in *Findings of Fact #2*, above, occurred; the County contends that petitioner must repay those overpayments because he was an adult member of that FS household at the time of the overpayments.

DISCUSSION

The state shall, at least annually, certify to the Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Aid to Families with Dependent Children ["AFDC"], an overpayment of Medical Assistance ["MA"], and an overpayment of Wisconsin Works ["W-2"]. Wis. Stat. § 49.85(2) (2013-14).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a Hearing. Wis. Stat. § 49.85(3) (2013-14).

The Hearing right is described as follows:

"If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing."

Wis. Stat. § 49.85(4) (2013-14).

In this case petitioner never received the two May 3, 2013 *Notification of FS Overissuance* notices that were sent to him and, therefore, never had a prior opportunity for a Hearing. Petitioner's testimony was credible in this regard. Petitioner testified that he never lived at the address to which the notices were sent and that he has not lived in Wisconsin since 2010. The County presented no substantial evidence to rebut this. It follows that the above quoted statutory language does not limit the scope of the issues to be considered here.

The County argues that petitioner's request for a Hearing concerning the tax intercept was not made in a timely manner. An appeal of a tax intercept is timely only if a Hearing is requested within 30 days after the date of the tax intercept notice. Wis. Stat. §§ 49.85(3)(a)2. & (b)2. (2013-14); See also, Wis. Admin. Code § HA 3.05(3)(b) (February 2013). The County is to send the notice to petitioner's last-known address. Wis. Stat. §§ 49.85(3)(a)intro. & (b)intro. (2013-14). However, petitioner never received the July 11, 2014 *Important Notice About Your State Tax Refund and Credits* because it was sent to petitioner at an address where he did not live. Petitioner's testimony was credible in this regard. Petitioner testified that he has not lived in Wisconsin since 2010. The County presented no substantial evidence to rebut this. Therefore, petitioner's request for a Hearing concerning the tax intercept will not be dismissed as untimely.

As noted above, petitioner was not the casehead of the FS household where the 2 overpayments occurred. Nevertheless, the County contends that petitioner must repay those overpayments because he was an adult member of that FS household at the time of the overpayments.¹

The basic definition of a *household* for purposes of FS is 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)(3) (2015); *FoodShare Wisconsin Handbook* ["FWH"] 3.3.1. The issue here is whether or not petitioner lived in the household at the time of the overpayments.

The only significant evidence presented by the County were hearsay statements made by the casehead (*Case Comments* and *Access* computer renewals).² Exhibits #2, #5A & #6; See, Wis. Stat. § 908.01(3) (2013-14). First, on October 14, 2013 the casehead had her own Hearing concerning these very same overpayments. The Administrative Law Judge ["ALJ"] in that Hearing found that the casehead was "not

¹ The law provides that each person who was an adult member of the FS Household when the overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i) (2015); *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.2. Further, liability for an FS overpayment is not split evenly among liable parties. Liable individuals are responsible for 100% of the overpayment until the full debt is repaid in full. FWH 7.3.1.2. Finally, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2015); See also, *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.1 & 7.3.2.1.

² The casehead was not present at the April 14, 2015 Hearing in this matter and did not testify.

credible.” See, DHA Case No. FOP-149762 (Wis. Div. Hearings & Appeals October 23, 2013) (DHS).³ Thus, any statements made by the casehead are, at best, suspect. Second, petitioner testified credibly that he has not lived in Wisconsin since 2010 and that when he did live in Wisconsin he lived with his mother, not with the casehead (except, perhaps, for a period of about 4 or 5 months when he would visit the casehead sporadically). Exhibits #7 & #7A. Third, the casehead filed a Six-Month Report Form [“SMRF”] with the County on December 13, 2010 stating that petitioner did not live in her household (on January 14, 2011 she telephoned the County and stated petitioner “wasn’t supposed to be removed. He has been there all along.”) Exhibits #5 & #5A.

In circumstances where 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 [“Uncorroborated 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. There is little, if any, nonhearsay evidence in the record of this matter that corroborates the hearsay evidence. Therefore, it cannot be concluded that petitioner was a member of the FS household at the time of the overpayments. It follows that, with regard to petitioner, the 2 overpayment Claims cannot be sustained and must be reversed.

Nothing in this *Decision* prevents the County from seeking recovery in the future if it determines with new evidence that petitioner was part of the household and was overpaid, and it provides him with proper notice.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to establish the following 2 Claims against petitioner for overpayments of FS for the time period September 1, 2010 to June 30, 2012 in the total amount of \$9,493.00:

Claim Number [REDACTED]; September 1, 2010 to August 31, 2011; \$3,553.00 (\$1,039.00 of that amount has already been repaid); and,

Claim Number [REDACTED]; September 1, 2011 to June 30, 2012; \$5,940.00 (that amount has already been repaid in full).

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County, and that: (1) the County not certify any amounts to the Department of Revenue for purposes of a tax intercept of petitioner's income tax refund regarding the FS

³ The ALJ went on to state with regard to the casehead that “the documentary evidence demonstrates an egregious and deliberate effort to abuse this public benefit.” *Id.* The ALJ found that the casehead must repay the overpayments. Subsequently, after further proceedings, an Intentional Program Violation [“IPV”] sanction was imposed against the casehead in connection with these overpayments. See, DHA Case No. FOF-154149 (Wis. Div. Hearings & Appeals *Final Rehearing Decision* December 8, 2014) (DHS).

overpayments listed in *Findings of Fact #2*, above; (2) that the County not attempt to collect the FS overpayments from petitioner by any other means; (3) that, within 10 days of the date of this *Decision*, the County delete petitioner as a liable person for the overpayments listed in *Findings of Fact #2*, above; and, (4) that, within 10 days of the date of this *Decision*, the County refund to petitioner any monies of petitioner (including any monies intercepted from petitioner's Wisconsin State Tax Refund) that were used to repay any part of the overpayments listed in *Findings of Fact #2*, above.

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 1st day of May, 2015

\sSean P. Maloney
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 May 1, 2015.

Dane County Department of Human Services
Public Assistance Collection Unit