



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact
Redact
Redact

DECISION

FOO/164299

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Green County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on May 14, 2015. Two previously docketed hearings were rescheduled at petitioner's request.

The issue for determination is whether the respondent correctly terminated petitioner's FS enrollment due to its determination that petitioner did not reside in Wisconsin.

There appeared at that time 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
Green County Department of Human Services
N3152 State Road 81
Monroe, WI 53566

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Green County. She resides with her children in her father's home in Monroe, Wisconsin.

2. On February 6, 2015, the county agency notified the petitioner that her FoodShare would end on March 31, 2015, because she was not living in Wisconsin.
3. Petitioner's boyfriend, DM, leases a residence in Winslow, Illinois. He was incarcerated in October, 2014, and released on May 9, 2015.
4. While DM was incarcerated, petitioner cared for his dogs as well as her dog, which is kept at DM's house.
5. Petitioner appealed the termination of her FS benefits on February 27, 2015.

DISCUSSION

The FoodShare agency seeks to end the petitioner's benefits because it contends that she resides in Illinois, approximately 10 miles from petitioner's father's home in Monroe, WI. FoodShare residency requirements are not strict. Residents must live in the state in which they apply. States cannot impose durational requirements or require a household to live in a permanent dwelling, have a fixed address, or intend to remain in the state. 7 CFR § 273.3(a). A person cannot be considered a resident of a state she is in solely for vacation. Nor can she receive benefits from two different places in the same month. *Id.*

Wisconsin policy requires that "[a]pplicants for FoodShare must reside in, or be temporarily absent from Wisconsin" and gives the following guidelines for determining residency:

1. Residence does not mean the legal place of residence or principal home.
2. Residence does not mean the intent to live permanently in Wisconsin or the county.
3. A person who is in Wisconsin or in a county solely for vacation purposes is not a resident of the county.
4. Do not require someone to reside in Wisconsin or within a county for any minimum length of time.
5. Residence does not mean a permanent dwelling or a fixed mailing address.

FoodShare Wisconsin Handbook, § 3.2.1.

The respondent argued that it had received a tip that petitioner had been residing in Illinois since October of 2012, and that she was falsifying information in order to receive Wisconsin benefits. Following an investigation regarding petitioner's residency, the respondent terminated her enrollment in Wisconsin FoodShare. The respondent has not established that petitioner resides in Illinois. The respondent relies upon uncorroborated hearsay, erroneous information, and supposition in arguing about petitioner's residence; that is simply not enough to establish that the petitioner has misrepresented her current living situation, whether intentionally or unintentionally.

The petitioner successfully rebutted or explained each of the respondent's assertions of "proof" that she was residing in Illinois. The respondent asserts that an investigation by Redact concluded that petitioner resides in Illinois. See, Exhibit I. The investigator spoke with various neighbors, however, none of those individuals testified at the hearing, nor did the investigator appear. Such evidence constitutes hearsay, and cannot form a basis for a conclusion on my part. "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted." Wis. Stat. §908.02(3). "A 'statement' is (a) an oral or written assertion...of a person, if it is intended by him as an assertion." Wis. Stat. §908.01(1). The longstanding rule in Wisconsin is that findings of fact cannot be based entirely on uncorroborated hearsay. *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987); and see *Outagamie County v. Town of Brooklyn*, 18 Wis. 2d 303, 312 (1962).

The respondent also testified that the Winslow property landlord had reported that the petitioner is the only resident of the Winslow property, and that she signed a lease that commenced October, 2012. The landlord never supplied the respondent with a copy of the purported lease. That may be because petitioner's name is not, in fact, on the lease. The landlord did not appear at hearing to clear this up, though the petitioner presented a copy of an executed "Lease Agreement" for the Winslow property dated October, 2013, which was signed by the landlord and DM. See, Exhibit 3. I do not find any of the information purportedly provided by the landlord to be credible or reliable.

The respondent established that the petitioner applied for public assistance in Illinois in February, 2014. Exhibit M. At that time, the petitioner reported residing at the Winslow address. However, the respondent conceded that the petitioner herself rescinded the application by informing Illinois that she decided not to move and that her plans to move had fallen through. No Illinois benefits were ever issued. See, Exhibit A.

The respondent also established that petitioner receives mail at the Winslow address. The petitioner argued that the mail that she receives at the Winslow address relates to things such as gifts. Conversely, she argues that her insurance letters, cell phone bills, school correspondence all are sent to her Monroe address. The respondent did not counter this information; however it offered that the Winslow Post Office provided a statement indicating that it delivered mail to petitioner at the Winslow address since 2013. I'm guessing that the Monroe Post office would verify the petitioner received mail in Monroe, as well. I do not find this allegation dispositive of petitioner's residence.

Finally, the petitioner argued that a Child Protective Service Report contradicts the respondent's assertion that she resides in Illinois. That report included an identification of petitioner's address in Monroe, Wisconsin, and stated, "Family appears to be close and supporting of one another as they allow **Redact** and her children to stay in their homes." Exhibit 3. Petitioner supplied a corroborating letter from a representative of Voices Domestic Violence Program which stated:

... **Redact** and her children fled Illinois and went to a Wisconsin relative's home to escape domestic violence perpetrated by her ex-husband.

See, Exhibit 3.

Petitioner's father provided a corroborating email stating, in pertinent part, that petitioner resides with him in Monroe, Wisconsin, and that petitioner's children attend school in Monroe, Wisconsin. See, Exhibit 3.

I understand that the respondent was provided much circumstantial evidence demonstrating that the petitioner resides in Illinois, but even viewing the totality of the record before me, I am unable to conclude that the respondent has established that petitioner does not reside in Wisconsin.

CONCLUSIONS OF LAW

The FoodShare agency incorrectly terminated petitioner's FoodShare benefits because it incorrectly determined that petitioner did not reside in Wisconsin.

THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent to cancel the termination of petitioner's FS benefits, and reinstate petitioner's FS eligibility. All actions required by this Order shall be completed within 10 days of the date of this Decision.

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 22nd day of May, 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 May 22, 2015.

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