



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCB/166902

PRELIMINARY RECITALS

Pursuant to a petition filed June 24, 2015, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Dane County Department of Human Services in regard to Child Care, a hearing was held on July 23, 2015, at Madison, Wisconsin.

The issue for determination is whether the respondent correctly determined that petitioner is not eligible for Child Care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Bobby Annen

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 # [redacted]) is a resident of Dane County.
2. Petitioner received Child Care benefits Dane County. In early 2015 the county began an investigation concerning the residence of the children's father, R.F. After the investigation the county concluded that the father lived in the residence. After obtaining his income information,

the county informed petitioner by notice dated June 10, 2015, that she was not eligible for Child Care benefits effective June 30, 2015, due to household income exceeding program limits.

3. Petitioner resides at [REDACTED] with her four minor children. She reported that R.F. resides with his parents in [REDACTED].
4. R.F. consistently spends time at the petitioner's Madison home.

DISCUSSION

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1).

The Wisconsin Shares Child Care Assistance Manual, §1.3.8, provides:

Assistance Groups are defined as an individual who is a custodial parent or placement parent, and their dependent children, and all dependent children with respect to whom the individual's dependent child is a custodial parent.

The Assistance Group also includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual, and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent.

The key is that the parents must reside together. Petitioner acknowledges that R.F. spends a great deal of time at her home, and spends the night there approximately once or twice per week. She testified that R.F. has not resided in her home since May of 2014, at which time he moved in with his parents in [REDACTED].

The respondent produced excerpted entries from social media site Facebook, indicating that at various times in the past few years the petitioner and R.F. have portrayed themselves as a couple in an open media forum, but the excerpts often do not clearly indicate the years of the pictures or comments. See, Exhibit 2-H. There are pictures of the couple dated June and August of 2014, but again, this fails to establish that petitioner and R.F. reside together presently. *Id.*

Next, the respondent testified that on June 25, 2014, R.F. used the petitioner's address when he renewed his driver's license. See, Exhibit 2-H.

The respondent provided R.F.'s employment information, which demonstrates that R.F. was using the petitioner's home address as his address of record. See, Exhibit 2-H.

The respondent also provided a police report pertaining to a 2013 incident, which indicated that petitioner and respondent were not living together, and further stated that they have never lived together and have never been married. See, Exhibit 2-H.

The respondent also submitted a copy of an email from [REDACTED], which stated that he had petitioner and R.F. in court on March 26, 2015, pertaining to a paternity judgement. He reported that, at that time petitioner and R.F. both indicated that they resided together with their children. When he raised the issue about reporting R.F.'s residence to their "eligibility worker," Mr. [REDACTED] wrote that they changed their story to indicate R.F. was residing with his parents. See, Exhibit 3. Mr. [REDACTED] did not appear at hearing, nor was a transcript of the paternity proceedings provided.

Next, the Department produced a printout entitled “Main Booking Table” which references inmate booking information identifying R.F.’s home address on [REDACTED]. See Exhibit 2-H. This appears to pertain to a December, 2013, period of incarceration.

Finally, the Department produced Investigative Surveillance Notes and Observations prepared by a Department Fraud Investigator, [REDACTED] [REDACTED] [REDACTED] did not appear at hearing. The surveillance occurred on May 13, 2015, May 14, 2015, May 16, 2015, and May 17, 2015. The report indicates that R.F. exited the [REDACTED] residence at 7:45 am on May 13, 2015, and that his car was parked at that location again at 9:21 pm that same day. On May 14, 2015, the report indicates that R.F. again exited the [REDACTED] [REDACTED] home at approximately 7:45 am. On May 16, 2015, and May 17, 2015, at 5:27 pm and 9:09 pm, respectively, R.F.’s vehicle was parked at the [REDACTED] home. See, Exhibit 2-H.

Petitioner testified that she does not live with R.F. She referred to their relationship as “confusing,” and noted that he does not keep any belongings at her home. She testified that he works very near by her home, and is actively engaged in raising their children. She indicated that petitioner spends one or two nights per week at her home. I also note that R.F.’s mother often babysits the children, according to the respondent’s investigative report.

The petitioner further testified that she was unaware that R.F. had used her address with the DOT or his employer, but noted that R.F. and his father share the same name, and that his father has had some legal issues. Petitioner submitted a notarized letter from R.F., which states:

...
 My dad and I have the same name which has caused confusion and inconvenienced me in the past. My dad used to work for [REDACTED] [R.F.’s employer] and I am not comfortable having anything work-related sent to my parent’s house. My parents also have judgments against them and owe people money. I didn’t register my vehicle to their address because I didn’t want a lien to be taken out on my property. ...

Exhibit 3.

The majority of the information provided at hearing by both parties is hearsay. 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. An ALJ does not have discretion to disregard this mandate.

The Department’s entire case was based upon hearsay evidence derived from multiple records databases and reports, with no witness produced providing direct oral testimony that places R.F. as a household member living with the petitioner. The investigative report, while corroborative of certain information, demonstrates only that R.F. apparently spent the night at the [REDACTED] address on one evening. While I have concerns about some of the allegations of inconsistent household information provided by the petitioner, she has provided letters from R.F. and R.F.’s parents that establish R.F.’s residence in [REDACTED]. This was a very close case, but I conclude that the rebuttal offered by the petitioner simply exceeds the respondent’s hearsay-based case in chief. I thus will order that the termination of petitioner’s Child Care eligibility be rescinded.

CONCLUSIONS OF LAW

R.F. does not reside with petitioner, and therefore his income should not be included in petitioner's Child Care budgeting for eligibility purposes.

NOW, THEREFORE, it is ORDERED

That the matter be remanded to the county with instructions to rescind its termination of petitioner's Child Care authorization. This action 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 Children and Families, 201 East Washington Avenue, Room G200, 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 29th day of July, 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 July 29, 2015.

Dane County Department of Human Services
Child Care Benefits