



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/167558

PRELIMINARY RECITALS

Pursuant to a petition filed July 27, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Manitowoc County Department of Human Services (the agency) in regard to FoodShare benefits (FS), a hearing was held on August 20, 2015, at Prairie Du Chien, Wisconsin.

NOTE: The record was held open for 24 hours to give the agency an opportunity to provide a copy of the overpayment notice (Exhibit 6), the full case comments (Exhibit 7), and the State Wage Record and Pay information for the primary person, [REDACTED] (Exhibit 8). The record was also held open to get the wage information of [REDACTED] boyfriend, [REDACTED], but no such documentation was provided by the designated deadline.

The issue for determination is whether the Petitioner is liable for an overpayment of FoodShare benefits, incurred by [REDACTED].

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█

Respondent:

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

By: Alicia Free, Economic Support Specialist
Manitowoc County Department of Human Services
3733 Dewey Street
Manitowoc, WI 54221-1177

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Crawford County.
2. On July 23, 2015, the agency sent the Petitioner a FoodShare Overpayment Notice, indicating that she received an overpayment of benefits in the amount of \$2,013.00 for the period of December 1, 2014 and June 30, 2015. This is claim # [REDACTED] (Exhibit 6)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 27, 2015. (Exhibit 1)
4. The agency pursued this overpayment based upon its belief that the primary person, [REDACTED], was living with her boyfriend [REDACTED], but failed to report his income. The agency is holding the Petitioner liable for the overpayment because she was part of the food unit in June 2015. (Testimony of Ms. Free)
5. Petitioner lived with [REDACTED] from mid-May 2015 to mid-June 2015, because she was working as the live-in nanny. The arrangement did not work out and Petitioner moved into a different residence at the end of June 2015. (Testimony of Petitioner)
6. Case comments for May 13, 2015 and June 11, 2015 reflect this same information. (Exhibit 7)

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. *7 C.F.R. §273.18(a)(3)*. The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. *7 C.F.R. §273.18(a)(4)(b)*.

Further, “all adult or emancipated minors that were included in the household or should have been included in the household at the time of the overpayment occurred are liable for repayment of the overissuance of FS.” *FSH §7.3.1.2; see also 7 CFR §273.18(a)(4)(i)*, which states the people responsible for paying an overpayment claim include, “each person who was an adult member of the household when the overpayment or trafficking occurred” and “A person connected to the household, such as an authorized representative who actually traffics or otherwise causes an overpayment or trafficking.”

A food unit consists of, “one or more persons who live in the same household and purchase and prepare food together for home consumption. This group is tested for eligibility together...” *FSH §3.3.1.1* (Federal Regulations use and define the term “household” in 7 CFR §273.1(a) with the same meaning given to the term “food unit” in the FSH).

The agency wants to hold the Petitioner liable for an overpayment of benefits incurred by her friend, [REDACTED], for the period of December 1, 2014 through June 30, 2015, because she was part of [REDACTED] food unit in June 2015.

With regard to the overpayment that is alleged to have occurred from December 1, 2014 through May 31, 2015, there is no basis upon which to hold the Petitioner liable, because she was not part of [REDACTED] food unit/household at that time and there is nothing in the record that suggests she needed to be included in [REDACTED] food unit/household. As such, the agency has not met its burden to prove that the Petitioner is liable for any overpayment that might have occurred between December 1, 2014 through May 31, 2015.

With regard to the month of June 2015, it is undisputed that the agency correctly included the Petitioner in [REDACTED] food unit/ household. However, the agency’s basis for the overpayment claim is its belief that [REDACTED] boyfriend, [REDACTED] was living with [REDACTED] and should have been included in [REDACTED] food unit/household.

To prove this, the agency needed to provide evidence of:

- 1) Where [REDACTED] lived
- 2) Where [REDACTED] lived
- 3) That they had children in common.

In order to prove [REDACTED] and [REDACTED] were living together and had children in common, the agency relied upon several pieces of hearsay and double hearsay evidence contained in a report generated by O'Brien and Associates. (Exhibit 2) However, the Supreme Court of Wisconsin in *Gehin v. Wisconsin Group Insurance Board*, 278 Wis. 2d 111, 692 N.W.2d 572, 2005 WI 16, held that a finding of fact cannot be based solely upon uncorroborated hearsay evidence, when controverted by credible, in person, testimony. The Supreme Court stated that the relaxed evidentiary standards in administrative proceedings was, "not meant to allow the proceedings to degenerate to the point where an administrative agency relies only on unreliable evidence." *Gehin*, 278 Wis. 2d 111, ¶51, 692 N.W.2d 572; See Also *Michelle V. Housing Authority of the City of Milwaukee*, 779 N.W.2d 185, 2010 WI App 14

Petitioner testified that in the month that she lived with [REDACTED], she did not believe [REDACTED] was living there. Petitioner testified that [REDACTED] spent the night, maybe two to three times a week. Petitioner testified that she thought [REDACTED] had some clothing there, but she did not look in [REDACTED] closet to see what was there. Petitioner testified that [REDACTED] had a toothbrush in the bathroom.

Petitioner provided credible testimony. As such, pursuant to the *Gehin* decision, *supra*, a finding of fact cannot be based upon the various hearsay and double hearsay statements contained in the O'Brien and Associates report.

I note that the agency did not include any reliable documentation, such as [REDACTED] applications or renewals to establish her reported address. Without that, the Department of Transportation records concerning where [REDACTED] registered his vehicle are of little value. I also note that the last page of Exhibit 2 provides conflicting information concerning [REDACTED]'s address, indicating he was living in Sheboygan between June 30, 2014 and June 3, 2015 but living in Manitowoc between January 2014 and May 2015.

Based upon the foregoing, it is found that the agency has not met its burden to show that [REDACTED] and [REDACTED] lived together, so it has not met its burden to prove that an overpayment of benefits occurred. As such, Petitioner may not be held liable for an overpayment of benefits to [REDACTED].

CONCLUSIONS OF LAW

The agency has not met its burden to prove the Petitioner is liable for an overpayment of FoodShare benefits, incurred by [REDACTED] between December 1, 2014 and June 30, 2015.

THEREFORE, it is

ORDERED

That [REDACTED] be removed as liable party from claim # [REDACTED]. The agency shall take all administrative steps necessary to complete this task within ten days 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 Milwaukee,
Wisconsin, this 28th day of August, 2015.

\sMayumi M. Ishii
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 August 28, 2015.

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