



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 176501

PRELIMINARY RECITALS

Pursuant to a petition filed on August 31, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit regarding FoodShare benefits (FS), a hearing was held on September 20, 2016, by telephone.

The issue for determination is whether the petitioner must repay an alleged overpayment of FoodShare that occurred because she received benefits from two states simultaneously.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

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

By: [REDACTED]
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of the state of Michigan, but having previously been a recipient of FoodShare benefits and a resident of the State of Wisconsin from February 2015 through June 2015.

2. The petitioner was receiving FoodShare in Michigan when she moved to Wisconsin and applied for benefits here. She began receiving benefits in Wisconsin in February 2015.
3. The petitioner called to cancel her Michigan benefits prior to moving to Wisconsin; however, unbeknownst to her, her Michigan card continued to accumulate benefits from February 2015 through June 2015.
4. The petitioner did not use her Michigan benefits during the time she resided in and received benefits in Wisconsin.
5. Petitioner received FoodShare benefits from Wisconsin in the amount of \$3,634.00 from February 9, 2015 through June 29, 2015.
6. In August 2016 the Wisconsin Agency discovered that Michigan had also paid benefits to the petitioner during the same time period as Wisconsin and therefore mailed a FoodShare Overpayment Notice to the petitioner on August 29, 2016.

DISCUSSION

Federal regulations require state agencies to “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). This regulation requires the agency to recover all FoodShare overpayments regardless of whose error caused the overpayment. A person cannot receive FoodShare from two different project areas at once. 7 CFR § 273.3(a). A project area is the jurisdiction issuing FoodShare; it can be a county, some other entity set up by the state, or the entire state. 7 CFR § 271.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered if they were issued during the six years prior to the date the agency discovered the overpayment. *Id.*

As with most issues that come to a fair hearing, the county agency has the initial burden of establishing the propriety of its actions by a preponderance of the evidence; that is, the administrative law judge must be able to conclude that, based on the evidence of record, it is more likely than not that petitioner received duplicate benefits. See *State v. Hanson*, 98 Wis.2d 80, 295 N.W.2d 209 (Ct.App.1980). 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. Further, uncorroborated hearsay may not be relied upon to reach an ultimate finding of fact even if the hearsay meets an exception. (*Id.* at ¶ 89 stating “[h]earsay that is subject to an exception is still hearsay, and therefore the substantial evidence rule applies even to evidence admitted as an exception to the hearsay rule.”)

The petitioner had been receiving FoodShare in Michigan. When she moved to Wisconsin, she applied here and began receiving benefits. The petitioner’s uncontested sworn testimony was that prior to her moving to Wisconsin, she contacted Michigan to cancel her benefits. The agency submitted documents received from Michigan purporting to show that the petitioner continued to receive FoodShare benefits from Michigan throughout the time she was receiving FoodShare benefits in Wisconsin between February

2015 and June 2015. These records are uncorroborated hearsay. And although the records from Michigan potentially fall under the business records exception to the hearsay rule, they cannot support an ultimate finding of fact. There was no evidence that petitioner used any of her Michigan benefits during the time that she was receiving FoodShare benefits in Wisconsin nor was there any evidence that the duplication of benefits was the result of client error. Rather, the hearsay records from Michigan corroborate the petitioner's testimony that she re-applied for Michigan benefits upon her return to Michigan in July 2015 given her belief that she had previously cancelled the benefits.

In order to establish a case of overpayment due to duplication as a result of client error, the agency was required to establish by a preponderance of the evidence that the petitioner received duplicate benefits in both Wisconsin and Michigan and that it was due to some fault of the petitioner. There is insufficient evidence to establish that the duplication of benefits was the result of client error in this case. The petitioner's sworn testimony corroborated by the Michigan hearsay records lead to the reasonable conclusion that the duplication, if any, was based upon agency error in the State of Michigan. In which case, that agency can only recover an overpayment within the prior 12 months. Because the agency's case rests upon uncorroborated hearsay and because there is insufficient evidence that the duplication of benefits was the result of client error, it cannot recover the alleged overpayment of FoodShare that occurred over 12 months prior to the agency's discovery.

CONCLUSIONS OF LAW

There is insufficient admissible evidence that the petitioner received an overpayment of duplicate FoodShare benefits as a result of client error.

THEREFORE, it is

ORDERED

That this matter is remanded with instructions to cease attempts to recover from the petitioner the alleged \$3,634.00 overpayment of FoodShare that occurred between February 2015 and June 2015. The agency shall comply with this order within ten days of the date of 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, **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 28th day of September, 2016

\s _____
Kristin P. Fredrick
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 September 28, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability