



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

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In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 170637

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Pursuant to petition filed December 7, 2015, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Thursday, February 18, 2016 at 10:45 AM at , Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Office of the Inspector General  
Department of Health Services - OIG  
PO Box 309  
Madison, WI 53701

Respondent:

██████████  
██████████  
██████████

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # ██████████) is a resident of Dane County who received FS benefits in Dane County from October 12, 2011 through December 12, 2015.
2. On October 10, 2011, respondent submitted an application for FS benefits. She reported no household income.

3. On October 12, 2011, the agency issued a Notice of Decision to the respondent informing her that she was approved to receive FS benefits of \$141 for October, 2011 and \$200/month effective November, 2011. The notice also informed the respondent of the requirement to report to the agency any change in income within 10 days.
4. On February 23, 2012, the respondent submitted a renewal application. She did not report any household income
5. On March 13, 2012, the agency issued a Notice of Decision to the respondent informing her that she would continue to receive FS benefits of \$200/month. It also informed her of the requirement to report to the agency any change in income within 10 days.
6. On August 24, 2012, the respondent submitted a renewal application. She did not report any household income.
7. On September 6, 2012, the agency issued a Notice of Decision to the respondent informing her that she would continue to receive FS benefits of \$200/month. It also informed her of the requirement to report to the agency any change in income within 10 days.
8. On February 21, 2013, the respondent submitted a renewal application. She did not report any household income.
9. On February 22, 2013, the agency issued a Notice of Decision to the respondent informing her that she would continue to receive FS benefits of \$200/month. It also informed her of the requirement to report to the agency any change in income within 10 days.
10. On July 17, 2013, the respondent reported a change in her rent. The agency worker asked how respondent is paying her rent. The respondent reported that she is working in Chicago. Verification of employment and income was requested but not received. Petitioner's FS case closed on July 25, 2013.
11. On October 18, 2013, the respondent submitted a new application for FS benefits. She reported earned income from [REDACTED] and unearned income from unemployment compensation benefits.
12. On October 24, 2013, the agency issued a Notice of Decision to the respondent informing her that she would receive FS benefits of \$78 for October, 2013 and \$15/month effective November, 2013. It also informed her of the requirement to report to the agency any change in income within 10 days.
13. On March 3, 2014, the respondent submitted an application. She reported earned income from [REDACTED] and [REDACTED] and unearned income from unemployment compensation benefits.
14. On March 10, 2014, the agency issued a Notice of Decision to the respondent informing her that she would receive FS benefits of \$189/month effective April, 2014. It also informed her of the requirement to report to the agency any change in income within 10 days.
15. On September 26, 2014, respondent submitted an application. She reported unearned income from unemployment compensation benefits.
16. On October 23, 2014, the agency issued a Notice of Decision to the respondent informing her that she would receive FS benefits of \$143/month effective December 1, 2014. It also informed her of the requirement to report to the agency any change in income within 10 days.
17. On May 21, 2015, the agency received verification from The Work Number that the respondent worked for [REDACTED] ([REDACTED]) in Chicago beginning February 21, 2011 and continuing through October 3, 2014. The Work Number reported respondent's actual wages. On June 14, 2015, the agency received additional verification from [REDACTED] [REDACTED] that respondent worked approximately 25 hours/week and that her work was permanent seasonal work during the baseball season.
18. On December 11, 2015, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent intentionally failed to report earned income.

### DISCUSSION

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

*FoodShare Wisconsin Handbook*, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact.



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 31st day of March, 2016

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals

- c: Office of the Inspector General - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- ██████████ - email



**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](mailto:DHAMail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 31, 2016.

Office of the Inspector General  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[REDACTED]@wisconsin.gov