



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████ Respondent

DECISION

Case #: FOF - 171181

Pursuant to petition filed January 6, 2016, 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 Tuesday, April 5, 2016 at 01:45 PM 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 Milwaukee County who received FS benefits in Milwaukee County from June 17, 2013 through July 1, 2015.
2. On March 16, 2014, the respondent submitted a Wisconsin FS application. She reported she was a Wisconsin resident and homeless. She answered “no” to the question of whether she was receiving FS/SNAP benefits in another state.

3. On April 19, 2014, the respondent applied for SNAP benefits in the state of Missouri, reporting that she was a resident of Missouri. She received SNAP benefits every month from the state of Missouri from April, 2014 – May, 2015.
4. On July 29, 2014 and March 6, 2015, during phone reviews with the FS agency, the respondent reported that she was a Wisconsin resident, that she was homeless and that she was not receiving FS/SNAP benefits in another state.
5. From November 17, 2014 – December 29, 2014, the respondent received unemployment compensation benefits. She reported a Missouri address to the unemployment compensation division.
6. On June 5, 2015, the respondent contacted the FS agency inquiring about her FS benefits. At that time, she was informed by an agency worker that the agency discovered she was receiving duplicate benefits in Missouri and if she wished to continue to receive Wisconsin FS benefits, she was required to come to the FS agency with a photo ID to prove residence. The respondent did not provide the required proof of residence. On June 30, 2015, the respondent's Wisconsin FS case was closed.
7. On January 19, 2016, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent received duplicate FS benefits from Wisconsin and Missouri.
8. The respondent failed to appear for the scheduled April 5, 2016 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

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).

7 C.F.R. §273.16(e)(4) provides that the hearing shall proceed if the respondent cannot be located or fails to appear without good cause. The respondent did not appear or claim a good cause reason for not attending the hearing. Therefore, I must determine whether the respondent committed an IPV based solely on the evidence that the petitioner presented at hearing.

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., 4th 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. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

The case at hand asserts that the Respondent provided false information about whether she was receiving FS/SNAP benefits in another state in order to receive duplicate benefits in Wisconsin. For this alleged violation, the OIG seeks to disqualify the respondent from the FS program for a period of ten years.

Per 7 C.F.R. §273.16(b)(5), "an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years." See also FoodShare Wisconsin Handbook, § 3.14.12

There is no allegation that the respondent lied about her identity. Thus, in order to prove its case the OIG must show that she made a fraudulent representation about her state of residence.

Exhibit 10 is a Wisconsin FS Issuance History printout for the respondent. It is reliable as a regularly kept business record of the Department of Health Services and it establishes that the Respondent received FS benefits in Wisconsin between March, 2014 and June, 2015.

Exhibit 12 is a Missouri FS Issuance History printout for the respondent. It is also reliable as a regularly kept business record of the state of Missouri and it establishes that the respondent received FS/SNAP benefits in Missouri from April, 2014 – May, 2015.

In this case, it is difficult to determine whether the Respondent lied about her residence to either Missouri or Wisconsin. Respondent's Wisconsin benefits were used in Wisconsin and her Missouri benefits were used in Missouri. What is clear is that the respondent misrepresented her residency to at least one agency and misrepresented to both agencies that she was not receiving duplicate benefits in another state. The integrity of the program depends upon the accuracy and honesty of applicants and recipients. A representation does not require an affirmative act. It may also occur by failing to disclose information that would correct a false impression. Here the respondent had a duty to disclose her residency, and that failure to accurately disclose is a representation. See *State v. Ploeckelman*, 2007 WI App 31, 299 Wis.2d 251. *Kaloti Enterprises, Inc. v. Kellogg Sales Company*, 283 Wis.2d 555 (2005) The Respondent allowed the continuing and false representation that she was a Missouri resident and denied on her Wisconsin application that she was receiving Foodshare in another state. This amounts to an intended misrepresentation of residency for the purpose of receiving duplicate benefits.

I reviewed the § 273.16(b)(5) rule-making record. The following is contained in 66 FR 11 (January 17, 2001):

Finally, one respondent asked for clarification on whether continuing to receive benefits in one State after moving to a second constitutes duplicate participation [for purposes of the ten year disqualification]. If so, which State should pursue the IPV and establish the claim; the State the individual moved from or the State the individual moved to. In such cases, the State where the individual resides should initiate the IPV investigation and establish the claim.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules when she represented to both Wisconsin and Missouri that she was a resident of the state she when she applied for and received FS benefits from both states during the same period of time. Because the violation is based on receipt of duplicate benefits due to misrepresentation of residence, the petitioner correctly seeks to disqualify the respondent from the FS program for ten years.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that FS recipients may not receive duplicate benefits.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for ten years, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

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, WI 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 request (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 6th day of April, 2016

\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



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The preceding decision was sent to the following parties on April 6, 2016.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
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