



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

Winnebago County Department of Human Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 171481

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Pursuant to petition filed January 15, 2016, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Winnebago County Department of Human Services to disqualify ██████████ ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Tuesday, May 10, 2016 at 11:00 AM at Oshkosh, Wisconsin.

This hearing began on March 1, 2016, as scheduled. However, during the hearing, the Respondent asked to adjourn the proceedings because she had not received the agency's packet, yet. The Respondent confirmed her address on ██████████ Street and the hearing was rescheduled to March 25, 2016.

Because March 25, 2016, was Good Friday and the county agency was closed, the Respondent again asked to reschedule the hearing, since the agency representative would not be available for cross-examination. The hearing was then scheduled for May 10, 2016.

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

NOTE: The record was held open until the end of the day to give the agency an opportunity to supplement the record with copies of the leases signed by the Respondent and her husband. The Respondent posed no objection, because the Respondent failed to appear for the hearing. A packet containing a lease for the ██████████ Street residence, the move-in/move-out check list and Rental application have been marked as Exhibit 15. A packet containing a lease for a ██████████ Street residence and eviction papers has been marked as Exhibit 16.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

Respondent:

██████████  
██████████

██████████  
ADMINISTRATIVE LAW JUDGE:  
Mayumi Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The Respondent (CARES # ██████████) is a resident of Winnebago County.
2. On June 16, 2014, the Respondent contacted the agency regarding verifications they requested. The Respondent was informed that the agency needed ██████'s income verification from a foundry job. It was reported that ██████ worked 40 hour per week at \$9.27 per hour. Respondent was informed that she was over the income limit for healthcare benefits. (Exhibit 4)
3. On June 30, 2014, the Respondent reported that ██████ was out of the home, because he had cheated on her. (Exhibit 4)
4. On December 4, 2014, the Respondent completed a FoodShare and/or Child Care Six Month Report Form (SMRF) indicating that ██████ was no longer in her household. The Respondent signed the SMRF indicating, "I understand that the information I provide on this form may result in a change or termination of my benefits. I also understand that if I intentionally give incorrect information it may result in a find and/or imprisonment." (Exhibit 5)
5. Respondent and ██████ represented to the landlord of the ██████ Street address that they were married and both signed the lease for the residence on February 6, 2014. Petitioner and ██████ have lived at that address ever since. (Exhibit 15; Testimony of ██████████).
6. In May 2014, the Respondent made representations to ██████████ that she and ██████ were married and she signed a lease for a residence owned by ██████████ that listed ██████ as occupant. (Testimony of ██████████; Exhibit 16)
7. Petitioner also made representations to the agency that ██████ was her husband. (See Exhibit 4)
8. On January 25, 2016, the agency prepared an Administrative Disqualification Hearing Notice alleging that the Respondent provided false information regarding whether ██████ lived with her between July 1, 2014 and January 31, 2015. (Exhibit 1)

**DISCUSSION**

*Respondent's Non-appearance*

The Respondent did not appear for this hearing. This circumstance is governed by the regulation in 7 C.F.R. §273.16(e)(4), which states in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. *Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence.* If the household member is found to have committed an intentional program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the household member has 30 days after the date of the written notice of the hearing

decision to claim good cause for failure to appear. In all other instances, *the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.*

*Emphasis added*

The hearing in this case began on March 1, 2016. The Respondent participated in the hearing on that day. At the Respondent's request, the hearing was continued to May 10, 2016. The Respondent was advised of the date and time of the hearing, in a notice mailed to her at an address she confirmed on [REDACTED] Street. None of the notices mailed to the Respondent was returned to the Division of Hearings and Appeals.

The hearing notice instructed the Respondent to call me and provide a phone number where she could be reached for the hearing. The Respondent did not do this. An attempt was made to contact the Respondent at [REDACTED] [REDACTED], a number previously used to successfully contact the Respondent, but the outgoing message indicated the number was temporarily out of service. Accordingly, the hearing took place without the Respondent.

The Respondent did not contact the Division of Hearings and Appeals within 10 days to explain her failure to appear. As such, it is found that the Respondent did not have good cause for her non-appearance.

#### *What is an IPV?*

An IPV is defined at 7 C.F.R. §273.16(c) as intentionally: making a false or misleading statement or misrepresenting; concealing or withholding facts; or committing any act that constitutes a violation of the Food Stamp Act, federal regulations or any Wisconsin statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons or an authorization to participate (ATP) card.

The Department's written policy restates federal law, below:

#### **3.14.1 IPV Disqualification**

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

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.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

*FoodShare Wisconsin Handbook, §3.14.1.*

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make

restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

### *What is the Agency's Burden of Proof?*

In order for the agency 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 an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence" used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases.

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (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. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

*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 that the Petitioner sold her FoodShare benefits, even though there may exist a reasonable doubt that the Respondent violated the rules.

### *The Merits of the Agency's Case*

In determining eligibility for FoodShare benefits, the agency must budget all income of the FoodShare household<sup>1</sup>, including all earned and unearned income. 7 CFR § 273.9(b); FSH § 4.3.1 As such, the agency must

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<sup>1</sup> The Federal SNAP regulations define the term "household" differently than the FoodShare Wisconsin Handbook. Federal regulations define "household" as follows:

determine who makes up the applicant's household. A household is defined by the FoodShare Wisconsin Handbook as all people living in or temporarily absent from the same residence. FSH § 3.3.1.1 The food unit, is comprised of all individuals living in the same household who purchase and prepare food together. Id. However, spouses must be included in the same food unit / household, even if they do not purchase and prepare meals together. 7 C.F.R. § 273.1(b)(1); FSH § 3.3.1.3 As such, if Petitioner and her husband were living together, Petitioner's husband should have been included in Petitioner's household/FoodShare group and his income should have been considered in determining Petitioner's eligibility for FoodShare benefits.

In the case at hand, OIG asserts that the Respondent violated program rules between July 1, 2014 and January 31, 2015 by falsely claiming that her husband moved out of the home.

In order to prove this case, the agency must show:

- 1) That Respondent and [REDACTED] were married.
- 2) That Respondent reported [REDACTED] out of the home.
- 3) That [REDACTED] was still in the home during the time in question.
- 4) That [REDACTED] had income that should have been counted, but was not.

While it would have been nice to have a copy of the marriage license or an application summary showing that Respondent and [REDACTED] were married, [REDACTED], a landlord of Petitioner's residence since February 2014, testified that the Respondent made representations that [REDACTED] was her husband and both the Respondent and [REDACTED] signed a lease for the residence. [REDACTED], another landlord who signed a lease with the Respondent also testified that the Respondent made representations to him that she and [REDACTED] were spouses. Respondent has made the same representations to the agency, and Respondent and [REDACTED] have the same last name. Accordingly, it is found that Respondent and [REDACTED] were married during all times relevant. Therefore, [REDACTED] needed to be included in the same household / food unit as the Respondent.

The case comments for June 2014 and a December 2014 SMRF show that the Respondent reported [REDACTED] out of the home.

The testimony of [REDACTED] establishes that the Respondent and [REDACTED] have lived together since February 2014. According to [REDACTED] and Exhibit 15, both Respondent and [REDACTED] signed the lease in February 2014. [REDACTED] further testified that at no time did either Respondent or [REDACTED] tell her that [REDACTED] moved out of the residence. [REDACTED] testified that during the time in question, Respondent and [REDACTED] were having difficulty paying the rent and [REDACTED] was the only person who spoke to her about the situation and resolved the situation by agreeing to pay rent through a third-party.

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*General household definition.* (a) A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a).

The FoodShare Wisconsin Handbook uses the term "Food Unit" instead of "household" for groups of individuals who live together and purchase and prepare food together.

The case comments indicate that the Respondent reported that [REDACTED] had income from a foundry and that at some point, he also received short term disability benefits. (See Exhibit 4)

Based upon the foregoing, it is found that the Respondent was not truthful when she reported [REDACTED] out of her home and caused his income to be excluded from consideration.

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). There is nothing in the record to rebut the presumption that the Respondent intentionally provided false information about whether her husband was still living with her.

While the record does not show that the Respondent was given the FoodShare penalty warning, the Respondent was warned in December 2014 that providing false information was a violation of program rules that could result in a fine or imprisonment. Despite this warning, she still reported [REDACTED] out of the home. I note that the case comments allude to a motive for the Respondent to fabricate a story about her husband moving out of her residence. Specifically, the case comments indicated that an agency worker informed the Respondent that she was no longer eligible for healthcare benefits, because of her husband's income. The case comments further indicate that Respondent then told the agency worker that she was upset about the loss of her healthcare benefits, because she had some significant medical issues.

Based upon all of the foregoing, it is found that the Respondent intentionally violated the rules of the FoodShare program by falsely reporting [REDACTED] out of her home when she called the agency in June 2014 and again when she completed the December 2014 SMRF.

#### **CONCLUSIONS OF LAW**

1. The Respondent violated, and intended to violate, rule 7 C.F.R. §273.16(c) prohibiting the use of false or misleading statements to obtain FoodShare 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 agency's determination is sustained, and that the agency may make a finding that the Respondent committed a first IPV of the FoodShare program and disqualify the Respondent from the program for one year, 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 23rd day of May, 2016

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\sMayumi Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

- c: East Central IM Partnership - 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  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 23, 2016.

Winnebago County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[REDACTED]@co.winnebago.wi.us