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[REDACTED]

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

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In the Matter of

Winnebago County Department of Human Services,  
Petitioner

DECISION

v.

FOF/171482

[REDACTED], Respondent

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 15, 2016, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the Winnebago County Department of Human Services to disqualify [REDACTED] from receiving FoodShare benefits (FS) for a period of one year , a hearing was held on March 01, 2016, at Oshkosh, Wisconsin.

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

The record was held open until March 15, 2016, to give the Respondent an opportunity to provide additional information. None was received by the designated deadline.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Department of Health Services  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], Fair Hearing Coordinator  
Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

Respondent:

[REDACTED]  
[REDACTED]  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. On August 5, 2014, the Respondent completed an on-line ACCESS Six Month Report Form (SMRF) in which she reported living on [REDACTED] with only her two children. No other adult was reported in the home. The Petitioner electronically signed the form, certifying, under penalty of perjury that the information was correct and complete. (Exhibit 3)
3. [REDACTED] is the father of at least one of the Petitioner's children. (Testimony of Petitioner)
4. The [REDACTED] residence is and was owned by [REDACTED], during the time in question. (Exhibit 12)
5. On January 25, 2016, the agency prepared an Administrative Disqualification Hearing Notice alleging that between March 4, 2011 and August 31, 2014, the Respondent committed an intentional program violation by failing to report [REDACTED] in her home. (Exhibit 1)

## DISCUSSION

### *The Definition of an Intentional Program Violation*

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.

7 C.F.R. § 273.16(c); *see also* Wis. Stat. §§ 946.92(2).

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.

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 County 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 as to the existence of each of the two elements even though there may exist a reasonable doubt that the elements have been proven.

*The Merits of the County Agency's Case*

In the case at hand, the county agency asserts that the Respondent committed an intentional program violation between March 4, 2011 and August 31, 2014, by providing false or misleading information about her household composition/income in order to receive more FoodShare benefits than she was entitled to. Specifically, it is alleged that the Respondent was living with [REDACTED], the father of her youngest child, during the time in question.

In order to prove its case the agency must have proof of the following:

- A. That the Respondent and [REDACTED] have a child in common.

The county agency provided no documentation to establish this fact - none. However, the Petitioner, in her testimony, admitted that [REDACTED] is the father of her youngest child who was born in 2007.

- B. That [REDACTED] lived at the [REDACTED] address between March 2011 and August 2014.

The Respondent does not dispute the fact that [REDACTED] owned and lived at the [REDACTED] address during the time in question.

- C. That the Respondent also lived at the [REDACTED] address between March 2011 and August 2014.

The Respondent admits living at the [REDACTED] address with [REDACTED] from April 2014 through August 2014 and after.

The Respondent denied living at the [REDACTED] address prior to April 2014.

In order to prove the Respondent was living at the [REDACTED] address during the three and a half years in question, the agency relied upon the verbal hearsay statements of a number of individuals to [REDACTED], an Investigator with [REDACTED] who did not verify their identities or get most of their last names. Such hearsay is not reliable and must be disregarded.

The agency provided a WCCA printout out for a paternity case with a filing date of September 2010, showing that both the Respondent and [REDACTED] were listed at the [REDACTED] address. However, this predates the period in question and as such, does not affirmatively prove they were living together between March 2011 and August 2014.

The agency submitted a White Pages website printout listing the Respondent at the [REDACTED] address. However, it is unknown where the website got the information, when it got it, or how current the information was. The information is at best double hearsay. Such evidence is not reliable and cannot be the basis of a finding of fact.

The agency also submitted a printout generated from the Department of Transportation (DOT) Public Abstract Request System on March 27, 2015, showing that the Respondent's primary address is listed as the [REDACTED] address, but this is also insufficient to establish where the Respondent was living between March 2011 and August 2014, because it was generated six months after the IPV Period. Further, it is unclear who provided the

information to the DOT and it is unclear when the information was last updated. As such, it does not prove the Respondent was living at the [REDACTED] address prior to April 2014.

- D. That when the Respondent completed her application / renewals / SMRFs, she did not report [REDACTED] in her home.

The only such document that the agency provided was a SMRF dated August 5, 2014. It is clear from that document and the Respondent's admissions, that she provided false information to the agency by failing to include [REDACTED] in her household, in August 2014.

However, because the agency did not provide any applications, renewals, SMRFs or case comments to show what the Respondent did nor did not report prior to August 2014, there is no way to know whether she reported false information prior to the August 2014 SMRF.

In addition, there is no indication that there are any disabled members in Respondent's household. As such, she was subject to reduced reporting requirements. If the Respondent moved in with [REDACTED] in between a renewal and SMRF, she only needed to report [REDACTED] in her home at the point that household income exceeded 130% of the FPL:

#### **6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)**

All other food units [i.e., household's which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% ([8.1.1](#)) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...

*FoodShare Wisconsin Handbook, §6.1.1.2.*

This follows Federal law which directs that States may:

“...require households with income that are assigned 6-month or longer certification periods to *report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.*” 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

So, between March 2014 and August 2014, the Petitioner did not need to report [REDACTED] in the home, unless the household income exceeded 130%.

While the agency has provided FoodShare overpayment notices and worksheets for some of the time (March 4, 2011 to December 31, 2012 and from May 2014 to August 31, 2014), it has not provided any actual proof of what [REDACTED]'s income was during the time in question – no pay stubs, no EVFES, no work number printout, no state wage match. Without proof that the household income exceeded 130% of FPL, the agency cannot prove that the Petitioner was obligated to report [REDACTED] in the home prior to the August 5, 2014, SMRF.

Based upon the foregoing evidence, it is found that the Respondent moved in with [REDACTED] in April 2014 and violated the rules of the FoodShare program by failing to accurately report [REDACTED] as part of her household in her August 5, 2014 SMRF.

The agency did not provide any documentation, such as a FoodStamp Issuance History Disbursement Printout, showing that the Respondent received benefits, based upon the false information. However, the Respondent did not dispute the fact that she received FoodShare benefits during the time in question.

In order to prove the second element, intent, 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, but intention is a subjective state of mind to be determined upon all the facts. See John F. Jelke Co. v. Beck, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131; 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 lied about her household composition. On the contrary, the Respondent testified that she was fully aware of the fact that she needed to report accurate information and that she could be disqualified from the FoodShare program, if she lied or provided misleading information, but she did it anyway.

I will note for the record, that the Respondent also admitted that in February and March 2015, she intentionally provided a fake lease and a forged letter to authenticate the fake lease. So, even if the county agency did not prevail on the IPV here, it could have sought to disqualify the Respondent based upon her intentional submission of fraudulent documents and issued a new request for an Administrative Disqualification Hearing.

#### **CONCLUSIONS OF LAW**

- 1) The Respondent intentionally violated the rules of the FoodShare program by providing false information in her August 2014 SMRF.
- 2) This is the first such violation for Respondent.

**THEREFORE, it is**

#### **ORDERED**

That the agency's determination is sustained, and that OIG may 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17th day of March, 2016

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\sMayumi M. Ishii  
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 March 17, 2016.

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