



**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 - 171857

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Pursuant to petition filed February 4, 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 Wednesday, March 23, 2016 at 09:00 AM by telephone at Milwaukee, Wisconsin. Respondent did not appear for the scheduled hearing. A message was left on her voicemail at 9:20 a.m. on March 23, 2016 to call back within 15 minutes if she wished to participate in the hearing. Respondent did not return the call until April 14, 2016. At that time, she stated that she lost the notice of hearing and was unable to remember the date and time. She stated she had attempted to call several agencies because she was uncertain what the hearing was about and who to contact. At that time, it was explained to the respondent that this was a matter in which the Office of Inspector General alleged she had committed an intentional program violation of the FS program based on receiving duplicate FS benefits in Wisconsin and Tennessee. The respondent hung up. The undersigned ALJ attempted to call the respondent back immediately. She did not answer and has not attempted any further contact with DHA regarding this matter.

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:

██████████  
██████████  
██████████

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ADMINISTRATIVE LAW JUDGE:  
Debra Bursinger  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. The respondent (CARES # [REDACTED]) is a resident of Pierce County who received FS benefits in Washburn County from November 25, 2014 through September 1, 2015.
2. On August 29, 2014, the respondent opened a FS case in Tennessee, reporting a Tennessee address to the FS agency in Tennessee. She received FS benefits for herself and her daughter of \$380 for August, 2014 and \$357/month for the period of October, 2014 – August 1, 2015. Almost all of respondent's Tennessee FS benefits were used in Tennessee during the period of August, 2014 – August, 2015.
3. On or about October 15, 2014, the respondent submitted an application for Wisconsin FS benefits. She reported that she was a resident of Wisconsin, living at [REDACTED] in Spooner, Wisconsin. She reported a household of five including herself, her daughter and her parents. Respondent was 21 years of age at the time of application. Respondent answered "no" to the question of whether she or any other household member was receiving FS benefits in another state. She reported that she and her daughter had moved to Wisconsin from Illinois. On October 28, 2014, during a phone interview with the agency, the respondent again reported that she had moved to Wisconsin from Illinois in approximately August, 2014. The agency approved the respondent for Wisconsin FS benefits. On November 25, 2014, the respondent received FS benefits of \$751 for October, November and December, 2014. Effective January 1, 2015, she received Wisconsin FS benefits of \$278/month. Effective May 2, 2015, she received FS benefits of \$357/month. Almost all of respondent's Wisconsin FS benefits were used in Wisconsin during the period of October, 2014 – September, 2015.
4. On November 14, 2014, the respondent contacted the agency and verified her address in Wisconsin.
5. In April, 2015, the respondent completed a Six Month Report Form and verified her address in Wisconsin.
6. In August, 2015, the agency received an interstate match alert that the respondent was receiving Tennessee FS benefits. An overpayment claim was established against the respondent for the period of October 15, 2014 – July 31, 2015 in the amount of \$2898.00. Respondent did not appeal the overpayment claim.
7. On February 22, 2016, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent provided false information to receive FS benefits in Wisconsin.
8. The respondent failed to appear for the scheduled March 23, 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., 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.



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 3rd day of May, 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**

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The preceding decision was sent to the following parties on May 3, 2016.

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