



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Rock Cty. Dept. of Social Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 175489

Pursuant to petition filed July 12, 2016, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Rock Cty. Dept. of Social Services to disqualify ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Thursday, August 25, 2016 at 08:30 AM at Janesville, 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:

Rock Cty. Dept. of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Rock County who received FS benefits in Rock County from September 28, 2015 through October 31, 2015 and January 4, 2016 – February 29, 2016.
2. On September 28, 2015, the respondent submitted a Wisconsin FS application. He reported that he was living in Wisconsin. He reported a mailing address on ██████████, Janesville. He reported he is not receiving FS benefits from another state.

3. On September 29, 2015, the agency issued a notice of interview to the respondent at his mailing address. On October 9, 2015, the notice was returned by the US post office as undeliverable.
4. On October 5, 2015, the agency conducted a FS phone interview with the respondent. He reported that he was homeless and living in Wisconsin. He provided his mailing address on [REDACTED] in Janesville. He reported he is not receiving FS benefits from another state.
5. On October 6, 2015, the agency issued a Notice of Proof Needed to the respondent at his mailing address requesting proof of identity. On October 15, 2015, the notice was returned by the US post office as undeliverable.
6. On October 6, 2015, the agency issued a notice to the respondent regarding his FS benefits. On October 15, 2015, the notice was returned by the US post office as undeliverable.
7. The respondent received FS benefits of \$213 for September and October, 2015.
8. On October 30, 2015, the respondent submitted a copy of his current Illinois driver's license showing a Chicago address.
9. On October 31, 2015, the respondent's Wisconsin FS case was closed due to lack of verification.
10. On January 1, 2016, the respondent re-applied for Wisconsin FS benefits. He reported his mailing address on [REDACTED], Janesville.
11. On January 4, 2016, the respondent contacted the agency. He reported he is not receiving Illinois FS benefits.
12. On January 5, 2016, the agency conducted an interview with the respondent. He reported he has been residing in Wisconsin for 7 – 8 months.
13. On January 5, 2016, the respondent received FS benefits of \$175.
14. On January 13, 2016, February 2, 2016 and February 10, 2016, the agency issued notices of FSET appointment to the respondent at his mailing address. All of the notices were returned to the agency by the US post office as undeliverable.
15. On February 3, 2016, respondent received FS benefits of \$194.
16. Effective February 29, 2016, the respondent's Wisconsin FS case closed.
17. From October 20, 2015 – January 8, 2016, all of respondent's transactions with his Wisconsin FS card took place in Chicago.
18. On January 29, 2016, the agency received information from the State of Illinois that respondent's Illinois FS case was open and ongoing since January, 2011 with the exception of one month in July, 2012.
19. On March 31, 2016, respondent's Illinois FS case was closed.
20. On June 1, 2016, the agency established FS overpayments for the respondent in the amount of \$213 for the period of September 28, 2015 – October 31, 2015 and \$369 for the period of January 4, 2016 – February 29, 2016 for failure to accurately report household information and for receiving duplicate benefits. Respondent did not appeal those overpayment actions.
21. On June 8, 2016, the respondent reapplied for Wisconsin FS benefits. He reported an address on [REDACTED], Janesville.
22. On July 15, 2016, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent was not a Wisconsin resident and received duplicate benefits when he applied. The notice was mailed to the respondent's address on [REDACTED], Janesville. The notice was not returned to the agency.
23. The respondent failed to appear for the scheduled August 25, 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.

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, and that this violation was the first such violation committed by the respondent. Though the evidence of respondent's receipt of Illinois FS benefits was hearsay, it is the best evidence presented and respondent did not appear to rebut the evidence. The agency presented evidence that supports the assertion that the respondent was not residing in Wisconsin including the evidence that all of his Wisconsin FS transactions occurred in Chicago for the period of October, 2015 – January, 2016. In addition, in January, 2016, the respondent reported he had been living in Wisconsin for 7 or 8 months but the agency presented evidence that the respondent was hired [REDACTED] in Chicago on April 26, 2015, at [REDACTED] in Chicago on June 21, 2015 and at [REDACTED] in Chicago on July 5, 2015. Further all notices sent to the respondent at his reported Wisconsin mailing addresses were returned to the agency as undeliverable. The only identification provided by the respondent was his Illinois driver's license showing a Chicago address. Based on the totality of the evidence and the lack of any rebuttal from the respondent, I conclude the agency has met its burden to demonstrate that the respondent intentionally committed a program violation by misrepresenting his Wisconsin residence to receive FS benefits and receiving duplicate benefits from Wisconsin and Illinois. Therefore, 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 an individual may not receive duplicate FS 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 30th day of September, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

- c: Southern Consortium - 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 September 30, 2016.

Rock Cty. Dept. of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]@co.rock.wi.us