FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOO/144955

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 28, 2012, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner can challenge the county agency's decision to disqualify her for an intentional policy violation of the FoodShare program after she signed a document waiving her right to challenge the decision.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Aaron Borreson
Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [redacted]) is a resident of Eau Claire County.

2. After determining that the petitioner allegedly failed to report that her boyfriend lived in her house, the county agency sought to impose an intention policy violation (IPV) finding against her and disqualify her from the FoodShare program.

3. The petitioner signed the following statement on August 22, 2012: "I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result, including a reduction in benefits during the disqualification period." *Exhibit 4.*

4. The county agency notified the petitioner on September 18, 2012, that her FoodShare would end as of October 1, 2012, because of the IPV finding. She now challenges the finding that she violated the program's rules.

DISCUSSION

An intentional program violation (IPV) of the FoodShare program occurs if a recipient "intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts, or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's." 7 C.F.R. § 273.16(c). If the county proves that the recipient intentionally violated FoodShare regulations, the recipient will be disqualified from the program for one year for the first violation. *FoodShare Wisconsin Handbook* , § 3.14.1.1.

Each state agency has the right to establish procedures that allow a recipient to waive a disqualification hearing. 7 CFR § 273.16(f) . Consistent with this and other regulations, Wisconsin has enacted the following policy concerning IPVs:

> 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.

Federal regulations require that the recipient be allowed to waive the hearing without admitting guilt. 7 CFR § 273.16 (f)(ii)(D). If the recipient does not admit the facts, she must sign a statement the same or equivalent to the following:

> I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result.

7 CFR § 273.16 (f)(ii)(D)(*2)*.

The county agency alleges that the petitioner committed an IPV by not reporting that her boyfriend lives in her house. It gave her the option of admitting this violation or being referred to the district attorney for criminal prosecution. On August 22, 2012, the petitioner signed the following statement:

> I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result, including a reduction in benefits during the disqualification period.

The petitioner contends that she signed this statement under duress because she was threatened with criminal prosecution, which the worker readily admits. I find nothing improper about the agency's actions because the IPV process allows agencies the right to refer or not refer a person for criminal prosecution based upon the significance of the violation and the person's cooperation. In addition, the statement she signed is equivalent to the one found at 7 CFR § 273.16 (f)(ii)(D)(*2)*. That said, there are some extenuating circumstances in this matter. The petitioner's boyfriend is apparently violent, which led to a restraining order in October 2012, and this action arose because he reported his living status to the agency in an attempt to avoid child support. Nevertheless, I have no authority to overturn a disqualification based upon the recipient's signed waiver and determine it on the merits because of the following provision found in 7 CFR § 273.16(f)(ii):

> No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair hearing decision.

The petitioner does have the right to seek relief, including a stay or other injunctive relief, from the circuit court. *Id.* This is consistent with the principle that circuit courts have equitable powers that allow them to consider the fairness of a situation but administrative agencies such as the Division of Hearings and Appeals do not. Because I have no authority to ignore the petitioner's signed waiver, I must uphold the IPV finding and related disqualification.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no jurisdiction to consider the petitioner's appeal of the imposition of an IPV finding and disqualification from the FoodShare program because she waived her right to a hearing.

THEREFORE, it is **ORDERED**

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

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, 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 Madison,
Wisconsin, this 14th day of December, 2012

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\sMichael D. O'Brien
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 December 14, 2012.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability