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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Eau Claire County Department of Human Services ,
Petitioner

v.

[redacted], Respondent

DECISION

FOF/145577

PRELIMINARY RECITALS

Pursuant to a petition filed November 20, 2012, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the Eau Claire County Department of Human Services to disqualify [redacted] from receiving FoodShare benefits (FS) for one year, a hearing was held on February 19, 2013, at Eau Claire, Wisconsin.

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

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

Respondent:

[redacted] (did not appear)
[redacted]

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

FINDINGS OF FACT

1. The Petitioner (CARES # [redacted]) is an Eau Claire County resident who received FoodShare from 2010 through 2012.
2. The petitioner failed to report that her boyfriend had moved out of her house. As a result, she received $3,454 more in FoodShare than she was entitled to from November 1, 2010, through October 31, 2012.
3. The county agency notified the petitioner of her hearing date at least 30 days before it occurred.

DISCUSSION

An intentional policy violation of the FoodShare program occurs when a recipient intentionally does any of 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. §§ 49.795(2-7).

An intentional policy violation can be proved 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 county agency can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified 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 when the agency mails a written demand letter. 7 C.F.R. §273.16(b). The county agency has the burden of proving by clear and convincing evidence both that the recipient committed the violation and that she did so intentionally. 7 C.F.R. §273.16(e)(6).

The county agency alleges that the petitioner falsely failed to report that her boyfriend had moved out of her household, which caused her to receive $3,454 more in FoodShare than she was entitled to from November 1, 2010, through October 31, 2012. She admitted this to the agency's investigator, Aaron Borreson, and did not appear at the hearing to challenge the agency's evidence. Mr. Borreson's testimony and the petitioner's lack of appearance together with documentation of an overpayment submitted at the hearing by Mr. Borreson establishes by clear and convincing evidence that she intentionally violated the FoodShare program's rules for the first time. Therefore, the agency correctly seeks to disqualify her from that program for one year.

CONCLUSIONS OF LAW

The county agency can disqualify the petitioner from the FoodShare program for one year because it has established by clear and convincing evidence that she intentionally violated the rules of that program.

THEREFORE, it is **ORDERED**

That the county agency may make a finding that the petitioner committed a first IPV of the FoodShare program and disqualify her from the program for one year.

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. See also, 7 C.F.R. sec. 273.16(e)(4) for the specific time limits for claiming good cause for missing the scheduled hearing. 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 26th day of February, 2013

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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 February 26, 2013.

Eau Claire County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability