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

In the Matter of

Milwaukee Enrollment Services,
Petitioner

DECISION

v.



FOF/147900

Respondent

PRELIMINARY RECITALS

Pursuant to a petition filed March 11, 2013, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. §273.16, to review a decision by the Milwaukee Enrollment Services to disqualify [REDACTED] from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on May 02, 2013, at Milwaukee, 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: Pamela Hazley

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

Respondent:



ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FS during the time period of April 27 - July 31 2011.
2. On April 26, 2011 respondent applied for FS via ACCESS # [REDACTED]. Respondent put on her application that she and her household members had no FS in that month and that she and her household members were residents of the State of Wisconsin. Exhibit 4.
3. On April 29, 2011 respondent had an interview with an agency worker and stated that she had moved to Wisconsin from Illinois and had not received any FS benefits in Illinois since November 2010. See Exhibit 3.
4. On May 2, 2011 the agency issued a notice of decision to respondent stating that effective April 27, 2011 she was eligible for FS. Exhibit 5.
5. On July 5, 2011 the agency received an alert from the State of Indiana that respondent had an FS case open there from July 2010 to August, 2011. See Exhibit 3 and 6.
6. Respondent used her Wisconsin FS in Wisconsin, Indiana and Illinois. See Exhibit 7.
7. On July 7, 2011 the agency issued a notice of decision to respondent stating that her FS case was closing effective August 1, 2011 because she was already receiving FS in another state. Exhibit 8.
8. On August 16, 2011 the agency issued a notice to respondent that it was seeking recovery of an FS overpayment for the time period of April 27, 2011 to July 31, 2011 in the amount of \$2093. Exhibit 9.
9. On March 11, 2013 the agency issued an Administrative Disqualification Hearing Notice to respondent. Exhibit 1. That is the subject of this decision.

DISCUSSION

An IPV is defined at 7 C.F.R. §273.16(c) as intentionally: making a false or misleading statement or misrepresenting; concealing or withholding facts; or committing any act that constitutes a violation of the Food Stamp Act, federal regulations or any Wisconsin statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons or an authorization to participate (ATP) card.

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.

FoodShare Wisconsin Handbook, §3.14.1.

Wisconsin statutes provide, in the parts relevant here, as follows:

- (2) No person may misstate or conceal facts in a food stamp program application or report of income, assets or household circumstances with intent to secure or continue to receive food stamp program benefits.
- (2m) No person may knowingly fail to report changes in income, assets or other facts as required under 7 USC2015(c)(1) or regulations issued under that provision.
- (3) No person may knowingly issue food coupons to a person who is not an eligible person or knowingly issue food coupons to an eligible person in excess of the amount for which the person's household is eligible.
- (4) No eligible person may knowingly transfer food coupons except to purchase food from a supplier or knowingly obtain food coupons or use food coupons for which the person's household is not eligible.
- (5) No supplier may knowingly obtain food coupons except as payment for food or knowingly obtain food coupons from a person who is not an eligible person.
- (6) No unauthorized person may knowingly obtain, possess, transfer or use food coupons.
- (7) No person may knowingly alter food coupons.

Wis. Stat. §§ 49.795(2-7).

The county 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).

In order for the county 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. It is used in civil cases where a higher standard is required because the outcome could result in serious social consequences for, or harsh effects on an individual. See 32A C.J.S., Evidence §1023. While the terminology for this intermediate standard of proof varies from state to state, it is clear that it is what is required by the FS regulations. See Jackson v. State, 546 So.2d 745 (Fla. App. 2 Dist. 1989).

What is needed to prove the first element, that an IPV as defined in 7 C.F.R. §273.16(c) was committed, is clear. In order to prove the second element, 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.

The respondent did not appear at the hearing. This circumstance is governed by the regulation at 7 C.F.R. §273.16(e)(4), which states in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if an Intentional Program Violation was committed based on clear and convincing evidence. If the household member is found to have committed an Intentional Program Violation, but a hearing official later determined that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice..., the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appeal. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

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 what the agency presented at hearing. Based on the evidence as specified in the above Findings of Fact, I find that there is clear and convincing evidence that the respondent committed, and intended to commit, an IPV. As noted above, respondent commenced receiving Indiana FS benefits at least as of July 2010 to August, 2011. She applied for the Wisconsin FS in April 2011. The application prepared by respondent specifically asks if the applicant is presently receiving FS benefits. Respondent answered no, despite the fact that her Indiana FS benefits had been ongoing for about one year. Furthermore, during the interview she failed to mention those Indiana benefits, instead pointing the worker in the direction of Illinois. It is evident, therefore, that respondent intentionally failed to report her Indiana FS benefits in order to obtain public assistance from Wisconsin for which she would have been otherwise ineligible.

CONCLUSIONS OF LAW

The agency can disqualify the respondent 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 agency may make a finding that the respondent 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 Milwaukee,
Wisconsin, this 15th day of May, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
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 May 15, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability