



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

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In the Matter of

Milwaukee Enrollment Services,  
Petitioner

DECISION

v.

FOF/149807

[REDACTED], Respondent

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 6, 2013, under 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 August 7, 2013, by telephone.

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

**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:

[REDACTED]  
[REDACTED]  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FS for herself and two children during the time period of February to December, 2012.
2. On February 6, 2012, during a renewal the respondent reported a new address on [REDACTED]. She did not report any additional household members. She did another renewal in October, 2012, still at the same address with no additional household members.

3. On December 4, 2012, the children's father applied for FS for himself and the two children, at the same address. He reported that the respondent had moved out. The agency later verified that the residence has been leased to the father with the children included on the lease during 2012, and he reported living there the entire year.
4. The agency determined that during 2012 the father should have been part of the respondent's FS household. After getting his income information the agency determined that the respondent was overpaid \$3,865 in FS from February 6 through December 31, 2012.
5. By a notice dated June 17, 2013, the agency informed the respondent that it intended to impose a first FS IPV sanction against her.

### **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 a federal, state, or local court order, an Administrative Disqualification Hearing (ADH) decision, or a prehearing waiver.

*FoodShare Wisconsin Handbook*, §3.14.1. The 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).

The Wisconsin Supreme Court viewed the various standards of proof as degrees of certitude. In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (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. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

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 exist a reasonable doubt that the opposite is true.

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 testified that she and the father had an argument in December, 2012 and he reported being together with her in 2012 as retaliation. However, when I asked the respondent what the living situation was during the year, she was evasive, saying that sometimes she moved out and sometimes he moved out. She stated that the children stayed with both parents. The respondent's evasive testimony is overwhelmed by the volume of evidence supporting the notion that she and the father were together with the children for most if not all of 2012. First there is a lease dated May 1, 2011 showing the father residing with the two children. The couple reported living together to the child support agency. Voting records had both of them there, and his employment record showed him consistently there. On the other hand, at no time did the respondent ever mention to the agency that the father was involved with the household at all. The only conclusion that can be reached is that the respondent deliberately avoided reporting the father's presence because she knew it could have a negative effect on her FS. That by definition is an IPV, and I conclude that the agency imposed the sanction correctly.

### **CONCLUSIONS OF LAW**

The respondent committed an FS IPV by failing to report the presence of her children's father in her household.

**THEREFORE, it is**

**ORDERED**

That the respondent, [REDACTED], is hereby ineligible to participate in the FoodShare program for a period of one year, effective the first month following the date of receipt of this decision.

**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 16th day of August, 2013

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\sBrian C. Schneider  
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 August 16, 2013.

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