



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/150077

PRELIMINARY RECITALS

Pursuant to a petition filed June 18, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on July 15, 2013, at Green Bay, Wisconsin. At the request of the parties, the record was held open for two weeks for the submission of petitioner's closing argument, and then for the county agency's written response to the Division of Hearings and Appeals (DHA). Both parties timely submitted their statements to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly reduced the petitioner's FoodShare (FS) benefits from \$437 to \$278 effective July 1, 2013, due to his wife was placed in an Intentional Program Violation (IPV) status due to her conviction for welfare fraud resulting in household size reduction from three to two persons.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Amanda Huilar, ESS
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County who resides with his wife, [REDACTED], and his son.
2. The petitioner received FoodShare (FS) benefits for a household of three.
3. [REDACTED] was convicted of welfare fraud on December 14, 2012 in Brown County Circuit Court in Case No. [REDACTED]. See Exhibit 4.
4. The county agency sent June 11, 2013 and June 12, 2013 notices to the petitioner stating that his wife was found guilty of an intentional program violation (IPV) of the FS program rules due to her conviction for welfare fraud in Brown County Circuit Court. See Exhibit 4. As a result, [REDACTED] was disqualified to receive FS benefits for the one year period of July 1, 2013 through June 30, 2014.
5. The county agency sent a June 17, 2013 notice to the petitioner stating that his FS benefits would be reduced from \$437 to \$278 effective July 1, 2013, due to the reduction of his FS household from 3 to 2 persons (petitioner and his son) due to his wife's FS disqualification for a first IPV which began July 1, 2013. See Exhibit 1.

DISCUSSION**IPV**

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.

(Emphasis added).

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.

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 this case, the record is uncontested that petitioner's wife, [REDACTED], was convicted of welfare fraud on December 14, 2012 in Brown County Circuit Court in Case No. [REDACTED]. The county agency correctly sent June 11, 2013 and June 12, 2013 notices to the petitioner stating that it determined his wife committed an intentional program violation (IPV) of the FS program rules due to her conviction for welfare fraud in Brown County Circuit Court. As a result, the county agency correctly disqualified her to receive FS benefits for the one year period of July 1, 2013 through June 30, 2014.

FS REDUCTION

During the July 15, 2013 hearing, county fraud investigator Diane Van Asten, ESS Amanda Huilar, and ES Supervisor Robyn Gillis testified and provided petitioner a detailed explanation regarding the IPV determination and the calculation of the July 1, 2013 reduction in his FS benefits. The county representatives explained how the petitioner's FS benefits had been calculated to be \$278 as of July 1, 2013 due to his wife's IPV/disqualification which caused his FS household size to be decreased from three to two persons. The petitioner was unable to provide any reliable or persuasive evidence to refute the county's case that his wife should be removed from his FS group due to her IPV. The petitioner was also unable to refute that the county agency had correctly calculated and reduced the petitioner's household from a FS group size of three to a FS group of two as of July 1, 2013.

During the July 15, 2013 hearing and in his July 22, 2013 written closing argument, petitioner attempted to "re-litigate" his wife's Court conviction for welfare fraud, and provided many excuses for why the IPV determination was unfair. However, ESS Huilar submitted a convincing July 25, 2013 written response which addressed petitioner's arguments. For the purposes of this FS reduction appeal, the central issue is whether the county agency is correct that due to her welfare fraud conviction in circuit court, petitioner's wife was correctly determined to have committed a first IPV. The county agency met that burden of proof. Petitioner was unable to refute the clear evidence as indicated in Findings of Fact #3 - #5 above. The petitioner basically argued that it is unfair that his FS benefits have been reduced due to his wife's IPV. However, in reviewing the county agency's IPV determination and the calculation of petitioner's FS benefits based upon FS policy and law, I find no error. Accordingly, for the above reasons, I conclude that the county agency correctly reduced the petitioner's FoodShare (FS) benefits from \$437 to \$278 effective July 1, 2013, due to a reduction in petitioner's FS group size from three to two persons.

CONCLUSIONS OF LAW

The county agency correctly reduced the petitioner's FoodShare (FS) benefits from \$437 to \$278 effective July 1, 2013 because his wife was correctly placed in an Intentional Program Violation (IPV) status due to her conviction for welfare fraud resulting in the reduction of petitioner's FS household from three to two persons.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 26th day of August, 2013

\sGary M. Wolkstein
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 28, 2013.

Brown County Human Services
Division of Health Care Access and Accountability