FH
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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

PACU – 5173,
Petitioner
v.
[redacted], Respondent

DECISION

FOF/150256

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2013, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the PACU - 5173 to disqualify [redacted] from receiving FoodShare benefits (FS) for a period of ten years, a hearing was held on August 06, 2013, at Madison, 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: Judy Johnson
PACU - 5173
P.O. Box 8939
Madison, WI 53708-8938

Respondent:

[redacted] (did not appear)
[redacted]

ADMINISTRATIVE LAW JUDGE:
Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Minnesota who received FS in Wisconsin during the time period of September 14, 2012 through May 31, 2013.
2. Respondent received FS benefits from the State of Minnesota from at least July 30, 2012, through July, 2013. Exhibit P-1.

3. Respondent submitted an ACCESS application for FS benefits on September 14, 2012. That application identified petitioner as a homeless resident of Wisconsin. Exhibit P-3.

4. Respondent submitted an ACCESS renewal for FS benefits, again identifying petitioner as a homeless resident of Wisconsin, dated March 4, 2013. Exhibit P-4.

5. Anoka County, Minnesota, provided petitioner with a copy of respondent's lease, executed on October 15, 2012, which verified petitioner's Minnesota address. Exhibit P-8.

6. Respondent's FS transactional history indicates that the majority of respondent's FS benefits were spent in Minnesota commencing in June of 2012. Exhibit P-2.

7. Respondent never notified the petitioner that he was receiving FS benefits from the State of Minnesota.

8. The respondent failed to appear for his scheduled August 6, 2013 IPV hearing and did not provide any good cause for said failure to appear.

DISCUSSION

An intentional policy violation of the FoodShare program occurs when a recipient intentionally does 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).

Wisconsin statutes prohibit the intentional exchange of FS benefits for cash. The law specifically provides that,

> 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.

Wis. Stat. § 49.795(4); *see also*, 7 C.F.R. § 271.5(b).

An intentional program 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 petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits 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 the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

7 C.F.R. §273.16(e)(4) provides that the hearing shall proceed if the respondent cannot be located or fails to appear without good cause. 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 the evidence that the petitioner presented at hearing.

In order for the petitioner 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). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (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. …

Kuehn, 11 Wis.2d at 26. 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.

In order to prove the second element, i.e., intention, 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 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 county 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 Minnesota FS benefits as early as July, 2012, and those benefits continued to at least July of 2013. Petitioner received Wisconsin FS benefits from at least September, 2012, through May, 2013. The application and ensuing renewal completed by respondent specifically include a question as to whether the applicant is presently receiving FS benefits from another state. Respondent answered no, despite the fact that his Minnesota FS benefits coincided with his Wisconsin benefits from September, 2012, through May, 2013. It is evident, therefore, that respondent intentionally failed to report his Minnesota FS benefits in order to continue to receive public assistance FS benefits from Wisconsin for which he would have been otherwise ineligible.

Federal statute imposes a 10 year disqualification upon any individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously. 7 C.F.R. §273.16(b)(5).

CONCLUSIONS OF LAW

The respondent intentionally violated, and intended to violate, the FS program rule specifying that FoodShare recipients shall not receive multiple food stamp benefits simultaneously.

THEREFORE, it is **ORDERED**

That the petitioner may make a finding that the respondent committed an IPV of the FoodShare program and disqualify the respondent from the program for ten years, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear.

APPEAL TO COURT

You may 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 18th day of September, 2013

_____

\sPeter McCombs
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 September 18, 2013.

PACU - 5173
Public Assistance Collection Unit
Division of Health Care Access and Accountability