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/150326

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 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 one year, a telephone hearing was held on August 06, 2013.

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: [redacted]
PACU - 5173
[redacted]

Respondent:

[redacted]

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Respondent (CARES # [redacted]) is a resident of Grant County who received FS in Iowa during the time period of February - April 2013. Exhibits 2, 3.
2. Respondent received FS benefits from the State of Wisconsin during the time period of February 1, 2013 through April 30, 2013. Exhibit 5.

3. Respondent executed an application for FS benefits on January 31, 2013. That application noted petitioner's address in Lancaster, Wisconsin. Exhibit 6.

4. Respondent never notified the petitioner that he was receiving FS benefits from the State of Iowa.

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).

An intentional program violation can be proven 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 receipt 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).

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.

Respondent testified at hearing that he understood that when he applied for benefits in Wisconsin, his Iowa benefits would be terminated. He does not recall from where he gleaned this understanding, nor did he contact FS representatives in Iowa to advise them that he was moving. He notes that this was his first move out of state.

Petitioner counters that the respondent used benefits from both states, and completed the Wisconsin application stating that he was not receiving benefits in another state.

Petitioner presented a well-organized and documented case. The respondent provided consistent and credible testimony countering the petitioner's case. As such, based on the hearing testimony and the record before me, I find that there is not clear and convincing evidence that the respondent committed, and intended to commit, an IPV. The respondent's credible testimony leads me to conclude that, while the respondent certainly received benefits for which he was not eligible, his receipt of said benefits was not due to an **intentional** violation of FS law and/or program rules.

CONCLUSIONS OF LAW

The petitioner has not established that 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's request for administrative disqualification of respondent from the FS program for a period of one year is hereby denied and the petition dismissed. This decision does not affect the petitioner's right to recoup overpayments.

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 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 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