



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Public Assistance Collection Unit, Petitioner

vs.

██████████, Respondent

DECISION
Case #: FOF - 150816

Pursuant to petition filed July 19, 2013, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Public Assistance Collection Unit to disqualify ██████████ ██████████ from receiving FoodShare benefits (FS) for ten years, a hearing was held on Thursday, September 26, 2013 at 01:00 PM, at Milwaukee, Wisconsin.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

Respondent:

██████████
████████████████████
████████████████████

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Milwaukee County who received FS benefits in Milwaukee County from July 6, 2012 through November 30, 2012.

2. On July 6, 2012, November 1, 2012 and February 7, 2013, the Respondent submitted FS renewal applications reporting that her daughter MT resided with her in Milwaukee.
3. On March 22, 2013, the agency received correspondence from the State of [REDACTED] that MT started receiving SNAP benefits as part of her grandmother's case in [REDACTED] beginning April 24, 2012.
4. On March 22, 2013, the agency contacted [REDACTED] in Milwaukee. The school confirmed that MT left school on May 5, 2012 to move to [REDACTED] with her grandmother.
5. On March 22, 2013, the agency issued an overpayment notice to the Respondent at her last-known address.
6. On April 1, 2013, the overpayment notices were returned to the agency as undeliverable. The agency attempted to contact the Respondent at her last-known telephone number. A message was left for her but the Respondent did not return the call to the agency. An email sent to the Respondent's last-known email address was returned to the agency.
7. On August 20, 2013 the Petitioner prepared an Administrative Disqualification Hearing Notice alleging that the Respondent reported false information to receive duplicate benefits.
8. The Respondent failed to appear for the scheduled September 26, 2013 Intentional Program Violation (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).

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 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 a 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 Petitioner presented sufficient information from the State of [REDACTED] and from [REDACTED] in Milwaukee to demonstrate that the Respondent's daughter MT was residing with her grandmother in [REDACTED] when the Respondent reported in July, 2012, November, 2012 and February, 2013 that MT resided with her in Wisconsin.

The respondent has not responded to the allegations either by way of this hearing or in response to letters that the agency mailed to her advising her of the allegations. I will take her lack of response or appearance as an adverse inference and find that the agency has met its burden of proof based on the evidence presented.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent due to receipt of duplicate benefits. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for ten years.



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 8, 2013.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability