



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

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In the Matter of

Public Assistance Collection Unit, Petitioner

vs.

DECISION

██████████, Respondent

Case #: FOF - 151017

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Pursuant to petition filed July 30, 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 one year, a hearing was held on September 17, 2013, and repeated on Wednesday, November 13, 2013 at 1:45 PM, by telephone.

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      By: Nadine Stankey, auditor  
P.O. Box 8938  
Madison, WI 53708-8938

*Respondent:*

██████████ (no appearance)  
██████████  
████████████████████

**ADMINISTRATIVE LAW JUDGE:**

Nancy Gagnon  
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 May 1, 2012 through October 31, 2012.

2. The Department sent a written *Administrative Disqualification Hearing Notice*, dated August 9, 2013, to the respondent notifying her of an FS disqualification hearing scheduled for September 17, 2013. It was mailed to her last known address. See Exhibit 12.
3. The respondent did not appear at the September 17, 2013 hearing. Several days after the hearing, the respondent telephoned to offer good cause for being absent (illness). Accordingly, the hearing was rescheduled. A new hearing notice was issued to the petitioner, advising her to be available for a telephone hearing on November 13, 2013, at 1:45 p.m. She did not answer the telephone when called by the Administrative Law Judge, at the telephone number supplied by the respondent, at the November 13 hearing time.
4. In the *Notice*, the Department alleged that the respondent committed an IPV by intentionally trafficking her FS benefits.
5. During the May through October 2012 period, the petitioner engaged in behavior consistent with trafficking, which is forbidden by federal regulation. She repeatedly made large “purchases” at a convenience store, ██████████, which was not near her residence. The large purchases often occurred on the same day. ██████████ has no carts or baskets to facilitate large purchases, as 89% of all purchases by all customers made at the store are for less than \$20. ██████████ stocks minimal amounts of groceries, and has more of an emphasis on snack items. Further, the respondent went out of her way to patronize ██████████, as there are at least 50 grocery stores closer to her residence than ██████████. Additionally, a statistically suspicious 73% of the respondent’s “purchases” at ██████████ ended in “0.”
6. ██████████ has been permanently disqualified from participation in the Foodshare program by the federal government, due to trafficking violations occurring from May through October 2012.
7. The respondent was interviewed by the Department (Ms. Stankey) on June 25, 2013, and offered no explanation for her pattern of suspicious behavior.
8. The petitioner intentionally trafficked a portion of her FS benefits in 2012.

### DISCUSSION

An intentional program 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.

#### CONCLUSION

I conclude that the agency has established, by clear and convincing evidence that the respondent intentionally trafficked a portion of her FS benefits. During the May through October 2012 period, the petitioner engaged in behavior consistent with trafficking, which is forbidden by federal regulation. She repeatedly made large “purchases” at a convenience store, [REDACTED], which was not near her residence. The large purchases often occurred on the same day. [REDACTED] has no carts or baskets to facilitate large purchases, as 89% of all purchases by all customers made at the store are for less than \$20. [REDACTED] stocks minimal amounts of groceries, and has more of an emphasis on snack items. The agency produced documents establishing all of the foregoing. Thus, I conclude that the respondent committed, and intended to commit, an FS IPV. The Department’s decision to disqualify her from FS participation for one year is correct.



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 225.53.

Given under my hand at the City of Madison,  
Wisconsin, this 22nd day of November, 2013

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\sNancy Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals

c: Public Assistance Collection Unit - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
Nadine Stankey - email



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 22, 2013.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[NadineE.Stankey@wisconsin.gov](mailto:NadineE.Stankey@wisconsin.gov)