



FH
[REDACTED]

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

In the Matter of

Public Assistance Collection Unit,
Petitioner

DECISION

v.

FOF/151081

[REDACTED], Respondent

PRELIMINARY RECITALS

Pursuant to a 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 [REDACTED] [REDACTED] from receiving FoodShare benefits (FS) for one year, a hearing was held on October 21, 2013, by a telephone call originating in Eau Claire, 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: Nadine Stanke
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

Respondent:

[REDACTED]
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FoodShare from May through October 2012.

2. In May through October 2012, the respondent's FoodShare card was debited 13 times at [REDACTED] Grocery Store, a small corner store that has since been disqualified for trafficking FoodShare with the program's recipients. All but two of these debits exceeded \$20; the debits that did not exceed \$20 were for \$15 and \$19.40. *Exhibit 5*.
3. On May 5, 2012, the respondent's EBT card was debited at [REDACTED] Grocery for \$40.60 at 2:09 p.m. and \$21.80 at 10:34 p.m. On May 6, 2012, it was debited there for \$39.36 at 12:05 p.m. and \$19.40 at 4:22 p.m. On May 7, 2012, it was debited there for \$29.90 at 9:57 p.m. On May 8, 2012, it was debited there for \$21. On May 5, 2012, it was debited at [REDACTED] for \$28.18 at 1:48 p.m. On May 6, 2012, it was debited at [REDACTED] for \$297.55 at 3:12 p.m.. On May 8, 2012, it was debited at [REDACTED] for \$40. *Id*.
4. On May 11, 2012, the respondent's EBT card was debited at [REDACTED] Grocery for \$39.80 at 6:37 p.m. That day her card was debited at [REDACTED] for \$94.79 at 3:50 p.m. *Id*.
5. On June 5, 2013, the respondent's card was debited at [REDACTED] for \$29 at 2:20 p.m. and \$1.30 at 8:58 p.m. The next day her card was debited there for \$15 at 3:58 p.m. and \$24 at 4:05 p.m. On June 5, 2012, it was debited at [REDACTED] for \$57.20 at 9:09 p.m. On June 6, 2012, her card was debited at [REDACTED] for \$294.19 at 12:34 p.m. and at [REDACTED] for \$39.45 at 1:05 p.m. *Id*.
6. On September 5, 2012, the respondent's EBT card was debited at [REDACTED] Grocery for \$39.87 at 10:29 a.m. That day it was also debited for \$468.20 at [REDACTED] at 11:30 a.m. and \$53 at [REDACTED]. *Id*.
7. On October 6, 2012, the respondent's EBT card was debited at [REDACTED] Grocery for \$45.61 at 8:47 a.m. That day, it was also debited for \$100 at [REDACTED] at 10:17 a.m. and at [REDACTED] for \$87.29 at 11:55. The day before, her card was debited for \$139.44 at [REDACTED] at 12:41 p.m. and for \$239.01 at [REDACTED] at 1:21 p.m. *Id*.
8. The USDA Food and Nutrition Services (FNS) disqualified [REDACTED] for FoodShare trafficking because of (1) an unusual number of transactions ending in the same cents value, (2) multiple transactions made by the same purchaser in unusually short periods of time, and (3) excessively large purchases. The store had one scanner and one cash register, little counter space to place items for purchase, and no shopping baskets or carts to allow customers to place multiple items that would add up to large purchases. Only 11% of the purchases made in the store from May 1, 2012, through October 31, 2012, exceeded \$20. *Exhibits 1, 2, and 4*.
9. The respondent lives 6.2 miles from [REDACTED] Grocery. There are over 50 grocery stores closer to the her residence than [REDACTED] Grocery. *Exhibit 7*. Her father lived close to [REDACTED] Grocery.

DISCUSSION

Federal FoodShare regulations directs a state agency to initiate "[a]dministrative disqualification procedures or referral for prosecution" when it "has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation as defined in paragraph (c) of this section." 7 CFR § 273.16(a). Wisconsin FoodShare policy interpreting 7 CFR § 273.16(c) states:

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.

Trafficking includes the following:

- Using FS benefits to purchase food that has a container deposit for the sole purpose of returning the container for a cash refund.

- Reselling food purchased with FS benefits for cash or other consideration.
- Purchasing, for cash or other consideration, food that was previously purchased from a supplier using SNAP benefits.
- Directly or indirectly buying, sells or steals EBT cards, card numbers or personal identification numbers (PINs), for cash or other items.
- The exchanging of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;

FoodShare Wisconsin Handbook, § 3.14.1. *see also* 7 CFR § 273.16(c).

An intentional policy 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 FoodShare agency can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified 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 when the agency mails a written demand letter. 7 C.F.R. § 273.16(b). The FoodShare agency has the burden of proving by clear and convincing evidence both that the recipient committed the violation and that she did so intentionally. 7 C.F.R. § 273.16(e)(6).

The Office of Inspector General alleges that the respondent trafficked her FoodShare benefits to [REDACTED] Grocery Store, a small corner store that has since been disqualified from the program for trafficking. Large food purchases rarely occurred at [REDACTED] because it had little counter space and no shopping carts or baskets, it has little fresh produce, its only cooler was broken, and most of the items were inexpensive. Those items that do cost more and could be purchased quickly include toilet paper and cigarettes, which cannot be paid for with a FoodShare debit card. The respondent lives 6.2 miles from [REDACTED]. There are more than 50 grocery stores closer to her residence than [REDACTED] Grocery, including [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. All have a greater variety of food at a lower cost and are stores at which she regularly shops.

Yet on 12 occasions from May through October 2012, the petitioner's EBT card was debited for over \$20 at [REDACTED]. From May 5 – 8, 2012, her card was debited six times there, with the amount of the debits ranging from \$19.40 to \$40.60. On May 11, it was debited for \$39.80. During this same period, her card was debited twice at [REDACTED], once at [REDACTED], once at [REDACTED]. These debits ranged from \$28.18 to \$297.55. On June 5 and 6, 2012, her card was debited four times at [REDACTED], with the amount of the debits ranging from \$15 to \$41.40. On those same dates, her card was debited \$57.20 at [REDACTED], \$294.19 at [REDACTED], and \$39.35 at [REDACTED]. On each of the other times her card was debited at [REDACTED] Grocery for at least \$20, it was also debited at least twice within a day at one of the larger, better stocked stores. The total amount debited at these other stores exceeded \$500 for each group of days falling within a day of the [REDACTED] Grocery purchase.

The respondent contends that she goes to [REDACTED] Grocery because her father lives next to it. Her children use the store after school and she states that she purchases cases of Ensure there for her father who has diabetes. Neither of these arguments is credible. If her children are using the store for a snack after school, one would expect that the amount would be less than \$20. In addition, one would expect a fairly random pattern of going to the store. Instead, all but one purchase made there occurred between the 5th and the 8th day of the month; the other purchase occurred on the 11th day of the month. As for buying Ensure for her father, it would make more sense to buy this from [REDACTED] or some other larger store, where it is presumably cheaper. [REDACTED]'s website indicates that a case of Ensure costs \$35.88 there. <http://www.samsclub.com/sams/ensure-plus-homemade-vanilla-shake-24-8-oz/161381.jp>. Even if it were not be available at [REDACTED], it should be available at one of the other larger stores. Perhaps the petitioner purchased Ensure at some point from [REDACTED] Grocery, but in most instances the amounts debited from her card are inconsistent with purchasing a case of Ensure. One would expect that [REDACTED] would

charge at least as much as [REDACTED], but the respondent's debits at [REDACTED] included those for \$21.80, \$19.40, \$29.80, \$21, \$29, \$15, and \$24. Some of the debits possibly consistent with the cost of Ensure occurred on consecutive days; it is doubtful that the respondent's father needed two cases of the supplement at a time. (I note that although the respondent's father is not in her FoodShare household, I can find no regulation making it a violation of the FoodShare program for her to buy food for him as long as she does not profit.)

A more reasonable explanation of what happened is that the debits went for cigarettes and household products. When I asked the respondent why she shopped there she noted that they had things like cigarettes. She quickly backtracked when she realized that this admission would prove the Office of Inspector General's case. I find her original statement more credible than her retraction of it because there is no other plausible explanation of how her card was debited 12 times for over \$20, and generally within a day of when she used the card to purchase several hundred dollars' worth of groceries elsewhere.

"Clear and convincing evidence" is an intermediate standard of proof used in civil cases where the outcome could cause significant consequences for the individual. It is a greater burden than the "preponderance of the evidence" used in most civil cases and less than the "beyond a reasonable doubt" used in criminal cases. The Office of Inspector General has already established that [REDACTED] Grocery trafficked FoodShare benefits. The evidence that the respondent made a dozen large purchases at [REDACTED], all within a day making large purchases at several better-stocked stores, as well as the lack of a credible explanation of what was purchased, clearly and convincingly establishes that she is among those who trafficked benefits there. Based upon this, I find that the Office of Inspector General has clearly and convincingly established that she violated the rules of the FoodShare program and that she did so intentionally. Because this is her first violation, she is ineligible for benefits for one year.

CONCLUSIONS OF LAW

1. The respondent committed a FoodShare IPV by engaging in FoodShare trafficking.
2. The respondent is disqualified from the FoodShare program for one year.

THEREFORE, it is

ORDERED

That the IPV is sustained, and the respondent is ineligible to participate in the FoodShare program for one year, effective the first month following the date of receipt of this decision.

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. See also, 7 C.F.R. sec. 273.16(e)(4) for the specific time limits for claiming good cause for missing the scheduled hearing. 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 5th day of November, 2013

\sMichael D. O'Brien
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 November 5, 2013.

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