



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

In the Matter of

Dane County Department of Human Services, Petitioner

vs.

AMENDED DECISION

██████████, Respondent

Case #: FOF - 151472

Pursuant to petition filed August 21, 2013, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Dane County Department of Human Services to disqualify ██████████ ██████████ from receiving FoodShare benefits (FS) for 10 years [enhanced penalty for fraudulent representation of residence], a hearing was held on Tuesday, November 5, 2013 at 1:00 PM, at Madison, 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:

By: Bobby Annen, fraud investigator

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

Respondent:

██████████
██
████████████████████

ADMINISTRATIVE LAW JUDGE:

Nancy Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) received FS benefits in Dane County as an alleged resident of the same, from July 1, 2008 through June 30, 2011. See, Exhibit 5, Wisconsin FS disbursement history.
2. On September 23, 2013, the county agency issued the written *Administrative Disqualification Hearing Notice* to the respondent by certified mail of an FS disqualification hearing scheduled for November 5, 2013. This notification was mailed to her last known address. See Exhibit 1.
3. The respondent did not appear at the administrative disqualification hearing of November 5, 2013. She did not telephone or write to offer good cause for being absent, and she did not make contact with this administrative law judge to request that the hearing be rescheduled.
4. The respondent was overissued \$5,922 in FS from July 1, 2008, through June 30, 2011. The overissuance was caused by the respondent's statement at application that she was residing in Wisconsin and not receiving FS benefits elsewhere. The agency therefore found her eligible to receive FS through the State of Wisconsin. In fact, the respondent collected FS benefits from the State of Illinois simultaneously. She also made many of her FS purchases from her Wisconsin FS card in Illinois. The duplicate issuance of benefits caused her to be overpaid FS.
5. The agency advised that the petitioner that she had been overpaid FS benefits for the period above. The respondent stated to a county worker on March 21, 2013 that she was the victim of identity theft, but provided no corroborative evidence thereafter.

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: THE EVIDENCE PRODUCED AT HEARING ESTABLISHED THAT THE RESPONDENT INTENTIONALLY COMMITTED AN IPV.

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. The evidence that the respondent lived in Illinois intermittently and received duplicate benefits from two states throughout the subject period is solid and un rebutted. It is also undisputed that the respondent did not accurately report this situation during the multiple case reviews that occurred in her case over the years in question, thereby pointing to intentional commission on her part. The county worker credibly testified to the agency's evidence. Thus, clear and convincing evidence of the violation and its intentional nature was produced at hearing.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule at 7 C.F.R § 273.16(b)(5) and (c)(1).
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for 10 years [enhanced penalty for fraudulent representation of residence], 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. See 7 C.F.R. sec. 273.16(e)(4).

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 Petitioner 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, Room 651, Madison, WI 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 225.53.

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

\s\sNancy Gagnon
Administrative Law Judge
Division of Hearings and Appeals

c: Capital Consortium - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Bobby Annen - 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.

Dane County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Annen.Robert@Countyofdane.com



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