



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Dane County Department of Human Services, Petitioner

DECISION

vs.

Case # FOF-151478

██████████, Respondent

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 one year, a hearing was held on Monday, November 11, 2013 at 01:45 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: ██████████ ██████████, fraud investigator

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

Respondent:

██████████ ██████████, did not appear
c/o ██████████ ██████████, did not appear

ADMINISTRATIVE LAW JUDGE:

Gary Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Dane County who received FoodShare (FS) benefits in Dane County from March 1, 2013 through May 31, 2013.
2. The respondent failed to state on her March, 2013 Wisconsin FoodShare application that she began receiving Illinois FS benefits as of February, 2013.
3. The respondent used both the Wisconsin and Illinois FS benefits through the time period of March, 2013 through May, 2013.
4. On September 23, 2013, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that Ms. [REDACTED] deliberately failed to report her Illinois FS on her Wisconsin FoodShare application in order to receive duplicate FS from Wisconsin and Illinois.
5. The respondent failed to appear for the scheduled November 11, 2013 Intentional Program Violation (IPV) hearing, and did not provide any good cause for said failure to appear.

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. 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

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, no more than 30 days after the date of this hearing decision. 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 23rd day of December, 2013

\sGary Wolkstein
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 December 23, 2013.

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