



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/151995

PRELIMINARY RECITALS

Pursuant to a petition filed September 6, 2013, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to FoodShare benefits (FS), a hearing was held on October 9, 2013, by telephone.

The issue for determination is whether the Division of Hearings and Appeals has authority to reopen an Intentional Program Violation (IPV) waiver.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Nadine Stankey
Office of the Inspector General
1 West Wilson Street
Madison, WI 53701

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In August, 2013, the OIG notified petitioner that it intended to proceed with an IPV sanction against her, alleging that she had trafficked FS.
3. On August 19, 2013, petitioner discussed the allegations with Ms. Stankey of the OIG. She was informed that if she did not contest the findings she could sign a waiver of her hearing right. On

August 27 the OIG sent petitioner a packet with details of the charge, information about contesting the charge, and a form in which petitioner could waive any hearing on the matter.

4. Petitioner signed and returned the waiver form. Petitioner checked the following statement: "I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result, including a reduction of benefits during the disqualification period."
5. On September 5, 2013, the agency sent petitioner a notice informing her that she would be disqualified from receiving FS for twelve months.
6. On September 6 petitioner contacted the OIG to inquire about rescinding the waiver. She was given Ms. Stankey's number to call. Ms. Stankey did not receive a call, and instead petitioner filed this appeal.

DISCUSSION

An IPV is defined at 7 C.F.R. §273.16(c) as intentionally: making a false or misleading statement or misrepresenting; concealing or withholding facts; or committing any act that constitutes a violation of the Food Stamp Act, federal regulations or any Wisconsin statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons or an authorization to participate (ATP) card.

The Department's written policy restates federal law, below:

3.14.1 IPV Disqualification

7 CFR 273.16

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.

An IPV may be determined by a federal, state, or local court order, an Administrative Disqualification Hearing (ADH) decision, or a prehearing waiver.

FoodShare Wisconsin Handbook, §3.14.1. The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

Petitioner signed a waiver of her IPV hearing. The form makes clear that by signing petitioner agreed that a disqualification penalty would be imposed. The federal regulation, 7 C.F.R. §273.16(f)(2)(i) provides:

If the household member suspected of intentional Program violation signs the waiver of right to an administrative disqualification hearing and the signed waiver is received within the timeframes specified by the State agency, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of

this section. The period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification.

Furthermore, §273.16(f)(2)(ii) provides:

No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair hearing decision. The household member, however is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

Under the federal rule described above the Division of Hearings and Appeals does not have authority to rescind the IPV sanction. The only way that petitioner could contest the imposition of the sanction at this point is to seek review in the Milwaukee County Circuit Court.

CONCLUSIONS OF LAW

Under federal law, once an FS IPV sanction is imposed follow the signing of a waiver of the hearing, an administrative law judge does not have authority to rescind the IPV sanction.

THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

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. 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 14th day of October, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 14, 2013.

Office of the Inspector General
Division of Health Care Access and Accountability
jolyne.franklin@wisconsin.gov