



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General,
Petitioner

DECISION

v.

FOF/152026

[Redacted], Respondent

PRELIMINARY RECITALS

Pursuant to a petition filed September 11, 2013, under 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General (OIG) to disqualify [Redacted] from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on November 12, 2013, by telephone.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

PARTIES IN INTEREST:

Petitioner:

Department of Health Services
Division of Health Care Access and Accountability
1 West Wilson Street
Madison, Wisconsin 53703

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

Respondent:

[Redacted] (Did not appear)

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The respondent (CARES # [Redacted]) is a resident of Milwaukee County who received FS during the time period of May - October 2012.
2. During that period the respondent's FS card was used to make purchases at [Redacted], a small corner store that since has been disqualified as an FS vendor due to trafficking violations.

3. On August 30, 2013, the respondent signed a Waiver of Administrative Disqualification Hearing form, and the signed form was received by the Department on September 6, 2013.
4. On September 10, 2013, the Department sent a notice to the respondent informing her that the sanction was imposed and that FS would be reduced the next month. On September 12 the respondent contacted the OIG and requested that the waiver be withdrawn. The OIG withdrew the sanction and added the respondent back to the FS group.
5. On October 7, 2013, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent trafficked FS. The respondent failed to appear for the scheduled November 12, 2013 IPV hearing and did not provide any good cause for said failure to appear.

### **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.

*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).

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 OIG erred when it allowed the respondent to withdraw her waiver after the sanction was imposed. The form makes clear that by signing the respondent 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 the respondent could contest the imposition of the sanction at this point is to seek review in the Milwaukee County Circuit Court.

### **CONCLUSIONS OF LAW**

The respondent waived her right to an administrative IPV hearing, and thus the IPV sanction was imposed properly.

**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 one year, effective the first month following the date of receipt of this decision.

### **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 November, 2013

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\sBrian C. Schneider  
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 14, 2013.

Office of the Inspector General  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability