



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General
, Petitioner

DECISION

v.

[Redacted], Respondent

FOF/152049

PRELIMINARY RECITALS

Pursuant to a petition filed September 11, 2013, under Wis. Admin. Code § HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify [Redacted] [Redacted] from receiving FoodShare benefits (FS) for one year, a hearing was held on November 18, 2013, at Milwaukee, 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:

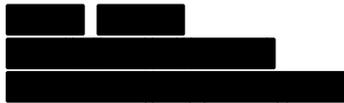
Petitioner:

Department of Health Services
Division of Health Care Access and Accountability
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Nadine Stanke

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

Respondent:



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. From May through October 2012, the respondent's FoodShare card was debited four times at [REDACTED] Grocery, a small corner store that has since been disqualified for trafficking FoodShare with the program's recipients.
3. 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.*
4. On July 6, 2012, the respondent's EBT card was debited at [REDACTED] Grocery for \$51.25 at 2:33 p.m. and \$4 at 3:48 p.m. That day it was also debited for \$154.73, \$58.50, and \$115.34 at [REDACTED] and for \$77.76 and \$20.70 at [REDACTED]. On July 9, 2012, it was debited for \$41.50 at 12:57 p.m. and \$18.75 at 2:31 p.m. . *Exhibit 5.*

DISCUSSION

An intentional policy violation of the FoodShare program occurs when a recipient intentionally does any of 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). Wisconsin law states:

- (3) No person may knowingly issue food coupons to a person who is not an eligible person or knowingly issue food coupons to an eligible person in excess of the amount for which the person's household is eligible.
- (4) No eligible person may knowingly transfer food coupons except to purchase food from a supplier or knowingly obtain food coupons or use food coupons for which the person's household is not eligible.
- (5) No supplier may knowingly obtain food coupons except as payment for food or knowingly obtain food coupons from a person who is not an eligible person.
- (6) No unauthorized person may knowingly obtain, possess, transfer or use food coupons.

Wis. Stat. §§ 49.795(3) – (6).

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. She did not provide a telephone number before the hearing and her number was not in the Division of Hearings and Appeals computer base; nor has she called to inquire about her hearing since it took place. As a result, she did not appear in any way at the hearing. When the respondent cannot be located or fails to appear without good cause, FoodShare IPVs proceed without her. 7 C.F.R. §273.16(e)(4). Because this is not a criminal case, an inference can be drawn that when a respondent does not appear after being properly notified of the hearing that she could not defend herself against the allegations.

Only 11% of purchases made at [REDACTED] Grocery exceeded \$20. Large food purchases rarely occurred at there because it had little counter space and no shopping carts or baskets, it has little fresh produce, its only cooler was broken when the agency investigated it, and most of its 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. From May through October 2012, the respondent used her EBT debit card for two purchases at [REDACTED] Grocery that exceeded \$20. On July 6, 2012, her EBT card was debited for \$51.25 and on July 9, 2012, it was debited for \$41.50. On both days she also made a smaller purchase there. On July 6, the purchase was for \$4 and on July 9 it was for \$18.75. She made several other purchase with the card on July 6. These included three purchases totaling \$328.57 at [REDACTED] and two totaling \$98.46 at [REDACTED] Exhibit 5. The Office of Inspector General contends that the two large purchase at [REDACTED] Market, nearly simultaneous large purchases at bigger, cheaper stores, and her lack of any other purchases at [REDACTED] Market prove that she was trafficking her FoodShare. This evidence, along with her failure to appear at the hearing, certainly raises a reasonable suspicion that she was trafficking her benefits. The question is whether this evidence is clear and convincing.

"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. In *Slomowitz v. Walker*, 429 So.2d 797, 800 (Fla. 4th. DCA 1983), the court held that clear and convincing must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

The evidence before me produces in my mind a firm belief or conviction, without hesitancy, as to the truth of the allegations the Office of Inspector General seeks to establish. [REDACTED] does not have the variety found in most supermarkets, but it does allow people to stock up on staples. It is difficult to believe that the respondent could find \$51.25 worth of food at [REDACTED] Grocery that she could not find at [REDACTED] and [REDACTED]—especially when she spent over \$425 at those two stores on the same day she went to [REDACTED] Grocery. The only reasonable explanation is that she used her FoodShare debit card to purchase nonfood items at [REDACTED] Grocery. Based upon this, I find that the Office of Inspector General has established an intentional program violation by clear and convincing evidence. Therefore, it can disqualify her from FoodShare program for one year.

CONCLUSIONS OF LAW

1. The Office of Inspector General has established by clear and convincing evidence that 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 Department disqualify the respondent from 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, Room 651, 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 9th day of December, 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 December 9, 2013.

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