



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION
Case #: FOF - 152053

Pursuant to petition filed September 11, 2013, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ ██████████ from receiving FoodShare benefits (FS) for one year, a hearing was held on Monday, November 18, 2013 at 02:45 PM, via telephone call originating in Eau Claire, 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:

Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Respondent:

██████████ ██████████
██
██

ADMINISTRATIVE LAW JUDGE:

Michael O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Milwaukee County who received FoodShare benefits in Milwaukee County from May 1, 2012 through October 31, 2012.

2. On October 17, 2013, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent trafficked FoodShare benefits.
3. The respondent failed to appear for the scheduled November 18, 2013, Intentional Program Violation (IPV) hearing and did not provide any good cause for her failure to appear.
4. 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.*
5. The respondent used her FoodShare debit card to make purchases at [REDACTED] Grocery six times from May through October 2012. On May 8, 2012, her card was debited for \$39.60 at 5:22 p.m., \$23.40 at 5:35 p.m., \$17 at 8:31 p.m., and \$5 at 8:35 p.m. On August 8, 2012, her card was debited for \$49.55 at 3:29 p.m. On October 8, 2012, it was debited for \$55 at 3:29 p.m.

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.
- 3.

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).

"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 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. 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.

Large food purchases rarely occurred at [REDACTED] Grocery because it had little counter space and no shopping carts or baskets, it has little fresh produce, its only cooler was broken, and most of the 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. The agency's representative, Nadine Stanke, testified that the investigation of [REDACTED] revealed that FoodShare recipients used their EBT cards to purchase those items there. The respondent used her EBT card to make six purchases at [REDACTED] Grocery from May through October 2012; four those exceeded \$20. On May 8, 2012, her card was debited for \$39.60 at 5:22 p.m., \$23.40 at 5:35 p.m., \$17 at 8:31 p.m., and \$5 at 8:35 p.m. On August 8, 2012, her card was debited for \$49.55 at 3:29 p.m.. On October 8, 2012, it was debited for \$55 at 3:29 p.m. This means that on May 8 her card was debited for \$85 and was debited twice for purchases exceeding \$20 within 12 minutes. Ms. Stanke spoke with the respondent and asked her how she carried all of the items. The respondent first said that she used a cart and then said she used a stroller. There are no young children in the respondent's household.

The Office of Inspector General has already established that [REDACTED] trafficked FoodShare benefits. The evidence submitted at this hearing that the respondent made four purchases over \$20, her failure to appear and offer a rational explanation of her purchases, and her misleading statements to Ms. Stanke establish clearly and convincingly that among the benefits [REDACTED] trafficked were hers. Based upon this, I find that the Office of Inspector General has established that she violated the rules of the FoodShare program and that she did so intentionally. Because this is her first violation, she is ineligible for benefits for one year.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that she not use her FoodShare to purchase nonfood items.
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 one year, 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).

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 6th day of December, 2013

\sMichael O'Brien
Administrative Law Judge
Division of Hearings and Appeals

- c: Office of the Inspector General - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 6, 2013.

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