



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION
Case #: FOF - 152061

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 (OIG) to disqualify ██████████ from receiving FoodShare benefits (FS) for one year, a telephone hearing was held on Wednesday, November 13, 2013 at 01:15 PM.

The issue for determination is whether an Intentional Program Violation (IPV) hearing can be held after the respondent signed and filed a waiver of the hearing.

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:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FS benefits in Milwaukee County during the period of August 1, 2012, through October 31, 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. Following petitioner's notification of the respondent that it suspected her of trafficking FS at [REDACTED] [REDACTED], the respondent signed a "Waiver of Administrative Disqualification Hearing" on September 5, 2013, and returned it to the OIG.
4. On September 9, 2013 the OIG sent the respondent a "Notice of Disqualification." Another notice followed from Milwaukee Enrollment Services on September 10 telling her that she was disqualified for a period of 12 months.
5. The respondent subsequently contacted the OIG and asked to withdraw her waiver. On October 7, 2013, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent trafficked FS.

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).

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 an imposed IPV sanction. §273.16(f)(2)(i) provides that when the waiver is received by the agency, the member *shall* be disqualified, and then the period of disqualification begins the next the month. Thus the regulation makes it a three-part process: (1) agency receives the waiver, (2) agency imposes the sanction, (3) disqualification begins in the next possible month.

On September 9, 2013, the OIG notified the respondent that she was disqualified. October 1, 2013, then, would be the date that the imposed sanction would affect respondent's FS. The respondent could appeal that her FS were not calculated correctly for October, but she could not appeal the sanction that was imposed due to her waiver.

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.

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).

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. 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 22nd day of November, 2013. 2013

\sPeter McCombs
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 November 22, 2013.

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