



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION

██████████, Respondent

Case #: FOF - 152422

Pursuant to petition filed October 1, 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 ten years, a hearing was held on Wednesday, November 13, 2013 at 2:30 PM, by telephone.

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 (by: Megan Ryan)
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Respondent:

██████████ (no appearance)
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Nancy Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Dane County who received FS benefits in Dane County from October 1, 2009 through February 28, 2013.

2. On October 2, 2013, the county agency issued the written *Administrative Disqualification Hearing Notice* to the respondent by certified mail of an FS disqualification hearing scheduled for November 13, 2013. This notification was mailed to his last known address. See Exhibit 14.
3. The respondent did not appear at the administrative disqualification hearing of November 13, 2013. He did not telephone or write to offer good cause for being absent, and he did not make contact with this administrative law judge to request that the hearing be rescheduled.
4. The respondent was overissued \$2,838 in FS from October 1, 2009, through February 28, 2013. The overissuance was caused by the respondent's statement at application/review that he and his minor son [REDACTED] H. were residing in Wisconsin and not receiving FS benefits elsewhere. The agency therefore found him eligible to receive FS for himself and [REDACTED] through the State of Wisconsin. In fact, [REDACTED] was living with his mother in Arkansas during the school year months. The placement was pursuant to a court order dated August 19, 2009. See, Exhibit 1. The issuance of benefits for [REDACTED] during the school year during the date range above caused the respondent to be overpaid FS.

DISCUSSION

An intentional program violation of the FoodShare program occurs when a recipient intentionally does 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) and Wis. Stat. §§ 49.795(2-7).

An intentional program violation can be proven 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 petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits 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 the date that the FS program mails a written demand letter. 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 respondent did not appear or claim a good cause reason for not attending the hearing. Therefore, I must determine whether the respondent committed an IPV based solely on the evidence that the petitioner presented at hearing.

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

Kuehn, 11 Wis.2d at 26. Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the opposite is true.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

CONCLUSION: THE EVIDENCE PRODUCED AT HEARING ESTABLISHED THAT THE RESPONDENT INTENTIONALLY COMMITTED AN IPV.

Based on the evidence as specified in the above Findings of Fact, I find that there is clear and convincing evidence that the respondent committed, and intended to commit, an IPV. The evidence that the respondent received benefits for a child who was not living with him, and may have been receiving FS from another state, throughout the subject period is solid and un rebutted. It is also undisputed that the respondent did not accurately report this situation during the multiple case reviews that occurred in his case over the years in question, thereby pointing to intentional commission on his part. The OIG worker credibly testified to the agency's evidence. Thus, clear and convincing evidence of the violation and its intentional nature was produced at hearing.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule at 7 C.F.R. § 273.16(b)(5) and (c)(1).
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 ten years, [enhanced penalty for fraudulent representation of residence] 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 2nd day of December, 2013

\sNancy Gagnon
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
- Megan Ryan - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 December 2, 2013.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
megan.ryan@wisconsin.gov