



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Marinette County Department of Human Services, Petitioner

DECISION

vs.

Case # FOF-152426

██████, Respondent

Pursuant to petition filed September 27, 2013, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Marinette County Department of Human Services to disqualify ██████ from receiving FoodShare benefits (FS) for one year, a hearing was held on Monday, November 4, 2013 at 02:15 PM, at Marinette, 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:

Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

Respondent:

██████
██████
████████████████████

ADMINISTRATIVE LAW JUDGE:

Gary Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████) is a resident of Marinette County who received FoodShare (FS) benefits in Marinette County from June 1, 2013 through June 30, 2013.

2. The respondent was employed at [REDACTED], but that employment ended during January, 2013.
3. On January 7, 2013, respondent submitted his six month report form (SMRF) to the county agency (petitioner).
4. The respondent did not begin new employment at [REDACTED] until about April 1, 2013.
5. Respondent had earned income of \$1,652.40 during April, 2013, and was required to report that increase in income because above the 130% threshold of \$1,211 for FS group of one.
6. On or about June 17, 2013, respondent reported to the county agency that he was incarcerated.
7. On July 9, 2013, respondent notified the county agency that he was working at [REDACTED] [REDACTED] [REDACTED] [REDACTED].
8. On August 20, 2013, petitioner sent a FS Overpayment Notice to the respondent stating that respondent received an overpayment of \$200 for the month of June, 2013.
9. On October 3, 2013, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent failed to timely report an increase in his income as of May 10, 2013 regarding his new employment at [REDACTED] as of April, 2013.
10. The respondent failed to appear for the scheduled November 4, 2013 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

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.

Based upon the record before me, I find that the petitioner has established that it is correctly pursuing a FS overpayment of \$200 for the month of June, 2013. However, the petitioner has not established by clear and convincing evidence that the respondent intentionally violated FS program rules. During the hearing, the petitioner's representative did not establish that the failure to timely report his new employment was not just an error by the respondent. Furthermore, the hearing record indicates that respondent was incarcerated during some indefinite period during May and/or June, 2013. The case comments indicate that on June 17, 2013 respondent reported to the county agency that he was incarcerated, and that respondent did report his employment at B & B on July 9, 2013. Moreover, the respondent did not submit any relevant SMRF or review which indicated that he lied about his employment at [REDACTED] – only that he was late in his reporting of that employment. While the record does establish a FS overpayment for June, 2013, the petitioner did not establish with clear and convincing evidence that the respondent intentionally violated FS program rules. Therefore, the petitioner incorrectly seeks to disqualify the respondent from the FS program for one year.

CONCLUSIONS OF LAW

1. The petitioner failed to establish by clear and convincing evidence that the respondent intentionally violated a FS reporting rule to have intended to commit an IPV.
2. The petitioner is incorrectly intending to disqualify the Resondent from the FoodShare program for one year under an IPV sanction.

NOW, THEREFORE, it is

ORDERED

That the petitioner's FS IPV determination against the respondent is reversed, and the petitioner is instructed to rescind the IPV sanction against the respondent's FoodShare case, within 10 day of the date 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). Such a claim should be in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

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, no more than 30 days after the date of this hearing decision. 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 26th day of December, 2013

\sGary Wolkstein
Administrative Law Judge
Division of Hearings and Appeals

- c: Bay Lake Consortium - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- Sandra Waugus - email



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The preceding decision was sent to the following parties on December 26, 2013.

Marinette County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
swaugus@marinettecounty.com