STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Milwaukee Enrollment Services, Petitioner

vs.

[redacted], Respondent

DECISION
Case #: FOF - 152770

Pursuant to petition filed October 4, 2013, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. §273.16, to review a decision by the Milwaukee Enrollment Services to disqualify [redacted] from receiving FoodShare benefits (FS) for ten years, a telephonic hearing was held on Thursday, December 19, 2013 at 11:30 AM, at Milwaukee, 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:

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

Respondent:
[redacted]

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES #[redacted]) received FS benefits in Milwaukee County from January 7, 2011 through April 30, 2012.

2. When the respondent applied for FS in Wisconsin on January 6, 2011 she reported that she was not already receiving FS in that month.

3. Respondent received FS in the State of [redacted] from at least October 2010 through October 2012.

4. Respondent received FS in the State of [redacted] from at least May 2011 through November 2011.

5. On July 1, 2011 respondent completed a review for FS in Wisconsin. At that time she reported she was still living in Wisconsin.

6. On December 23, 2011 respondent completed a review for FS in Wisconsin. At that time she reported she was still living in Wisconsin.

7. On April 4, 2012 respondent's FS case in Wisconsin was pended for verification of her residency as an interstate match revealed that she was also receiving FS in [redacted]. No verification was submitted by the respondent and her FS case closed in Wisconsin.

8. On October 21, 2013, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent misrepresented her residence for purposes of receiving FS.

9. The respondent failed to appear for the scheduled December 19, 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. An individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years. See 7 CFR §273.16(b)(5). 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.

I find that the respondent misrepresented where she was living in order to receive multiple FS. The continuous affirmative reporting of living arrangement in Wisconsin makes this clear. The petitioner showed that she was receiving duplicate FS in [redacted] and [redacted] during the time period in question. The respondent has not responded to those allegations either by way of this hearing or in response to letters that the agency mailed to her advising her of the allegations. I will take her lack of response or appearance as an admission of the allegations and find that the petitioner has met its burden of proof with the evidence it has presented that the intentional program violation occurred.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules and made a fraudulent statement or representation with respect to her place of residence in order to receive multiple food stamp benefits simultaneously. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for ten years.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that FS participants shall not intentionally make a false or misleading statement, or misrepresentations about her place of residence in order to received multiple FS.

2. The violation specified in Conclusion of Law No. 1 results in a disqualification from the FS program for ten years.

NOW, THEREFORE, it is **ORDERED**

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent made a fraudulent statement or representation with respect to her place of residence in order to receive multiple food stamp benefits simultaneously and may disqualify the respondent from the program for ten years, 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).

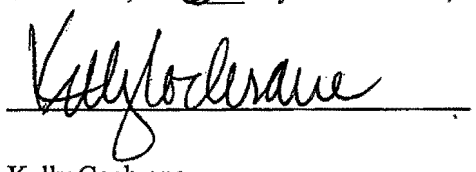
APPEAL TO COURT

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 Milwaukee, Wisconsin, this 30th day of December, 2013



Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Miles - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Pamela Hazley - email