



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION
Case #: FOF - 152992

Pursuant to petition filed October 21, 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 two years, a telephone hearing was held on Wednesday, December 11, 2013 at 01:30 PM.

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:

██████████
██████████
██████████

(no appearance)

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Winnebago County and on-going FS recipient who received FS benefits in Winnebago County from September 18, 2013 through September 30, 2013.

2. On August 12, 2013, the respondent executed a waiver admitting to an intentional program violation involving the illegal use of FS benefits to purchase alcohol and accepted a 12 month disqualification from the FS program from October 1, 2013 – September 30, 2014. Exhibit 1.
3. On September 18, 2013, the respondent purchased 2 boxes of cereal in the amount of \$8.38 utilizing his FS card. He returned the cereal without presenting his receipt, received a store gift card, and used the gift card to purchase alcohol.
4. On September 30, 2013, the respondent purchased frozen lasagna and two other items in the amount of \$7.99 utilizing his FS card. He returned the frozen lasagna and two other items without presenting his receipt, received cash, and used the cash to purchase alcohol.
5. On November 5, 2013, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent had trafficked his FS benefits.
6. The respondent failed to appear for the scheduled December 11, 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.

The petitioner established that the respondent had improperly converted his FS benefits to other forms of currency in order to sidestep the FS program rules regarding what can and cannot be purchased with FS benefits. The respondent was well aware of the fraudulent nature of his conduct, as he had signed a Waiver admitting to similar transgressions only days prior to again violating FS program rules in the same fashion. A twelve month disqualification period was established for that earlier violation. The respondent argues that the two year disqualification sought pertaining to the instant violations should commence after completion of the initial 12 month disqualification period. I agree, as the violations committed here constitute separate, subsequent offenses.

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 that these violations constitute the second such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for two years.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that FoodShare benefit may not be used to purchase alcohol.
2. The violation specified in Conclusion of Law No. 1 is the second 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 second IPV of the FoodShare program and disqualify the respondent from the program for two years, commencing October 1, 2014.

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, 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 30th day of December, 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 December 30, 2013.

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