



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION

██████████, Respondent

Case #FOF - 153147

Pursuant to petition filed October 28, 2013, under 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 December 11, 2013, by telephone.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

PARTIES IN INTEREST:

Petitioner:

Office of the Inspector General
Department of Health Services
P.O. Box 309
Madison, WI 53701

Respondent:

██████████ (Did not appear)

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) received FS benefits in La Crosse County from February 11, 2013 through July 31, 2013.
2. The respondent began to receive FS in La Crosse County, Wisconsin in August, 2012 and received them every month through July, 2013. Prior to that she received FS in Indiana, and her Indiana case closed July 31, 2012.

3. The respondent reapplied for FS in Indiana on October 9, 2012 and has received FS in Indiana since then.
4. The respondent did a six-month review in Wisconsin in February, 2013. She reported that she continued to live in La Crosse County.
5. The respondent used both the Wisconsin and Indiana FS throughout the time period. She used the FS exclusively in Indiana except for one month in Wisconsin in the winter of 2013.
6. On October 30, 2013, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent deliberately reported a false residence in order to receive duplicate FS simultaneously.
7. 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).

A specific provision applies to this case. 7 C.F.R. §273.16(b)(5) provides: "... 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."

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. 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

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, Wisconsin 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 20th day of December, 2013

\sBrian C. Schneider
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 20, 2013.

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