



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION

██████████, Respondent

CASE #FOF - 153148

Pursuant to petition filed October 28, 2013, 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:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Jefferson County who received FS benefits in Dane County from July 12, 2013 through October 31, 2013.
2. The respondent applied for FS in Dane County on July 12, 2013, reporting no permanent address. She specifically reported that she did not receive FS from any other agency in July, 2013. FS were granted and were issued to her through October 31.

3. On the morning of July 13, 2013, the respondent used the Wisconsin FS card to purchase groceries at a store in Dubuque, Iowa. Thereafter the majority of transactions were made in Iowa with exception of some purchases in the Chicago area and one \$2.23 purchase in the Madison area on September 27 (additional purchases were made that weekend in Chicago before the respondent returned to Dubuque the following week).
4. During the entire year of 2013 including the period of July through October the respondent also received FS in Dubuque, Iowa and used those benefits as well.
5. 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.

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).

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 by clear and convincing evidence that the respondent intentionally violated FS program rules by reporting a false Wisconsin address in order to receive FS in both Iowa and Wisconsin. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for ten years.

The respondent testified that when she applied for FS in Dane County on July 12 she truly intended to stay in the area. She moved to Madison with a boyfriend but soon after they had a falling out and she was left with nowhere to turn, so she returned to Dubuque. She acknowledges using the FS from both states but only because she was frantic and she admits now that she made a mistake in doing so.

The problem with the respondent's story is that it has too many holes. First, if she moved here with a boyfriend, why was there no mention of the boyfriend on her application? Second, was it also a simple mistake that she specifically denied receiving FS in another area in the month she applied in Dane County? Third, and most compelling, the respondent used the Wisconsin card the very next morning in Iowa. She would have us believe that she innocently applied for FS in Dane County on July 12, had a fight with the boyfriend who left her with no place to go later that day, and then managed to get back to Dubuque the next morning to make a purchase with the new card. Finally the respondent made no effort to report to Dane County a return back to Iowa and allowed the duplicate benefits to continue for three months (Dane County closed the respondent's FS because it received an interstate match with Iowa, not because of any action taken by the respondent). The alternative version, that the respondent filed a Dane County application on July 12 expecting to return to Iowa immediately is a much more believable set of facts.

CONCLUSIONS OF LAW

The respondent violated, and intended to violate, the FS program rule specifying that a recipient may not misrepresent her residence to receive multiple FS in the same month.

NOW, THEREFORE, it is ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed an IPV of the FoodShare program under 7 C.F.R. §273.16(b)(5) and disqualify the respondent from the program for ten years, effective the first month following the date of receipt of this decision.

APPEAL TO COURT

You may 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, 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 17th 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 17, 2013.

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