

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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January 27, 2014



Kristine DeBlare, Interstate Agent
Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Re: Final Decision
[REDACTED], Case Number FOF - 150819

Dear Parties:

Enclosed is a copy of the Final Decision in the above-referenced matter.

Sincerely,

Joan Alt
Supervisor

c: Office of the Inspector General - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Kristine DeBlare - email



STATE OF WISCONSIN

In the Matter of



DECISION

FOF 150819

The proposed decision of the Administrative Law Judge dated October 18, 2013, is hereby adopted as the final order of the Department.

REQUEST FOR A REHEARING

This is a final administrative decision. You may petition for an administrative rehearing by submitting a specific written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. This request must be received by the Division within 20 days of the date of this Order. The process for requesting a rehearing petition is contained in Wisconsin Statutes § 227.49.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of a timely rehearing request, if you ask for one). For purposes of appeal to Circuit Court, the Respondent in this matter is the Department of Health Services. Appeals 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. The process for appeals to the Circuit Court is contained in Wisconsin Statutes §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 27 day of January,
2014

Kevin E. Moore
Kevin E. Moore, Deputy Secretary
Department of Health Services



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

PACU - 5173, Petitioner

PROPOSED DECISION

v.

[REDACTED], Respondent

FOF/150819

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2013, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the PACU - 5173 to disqualify [REDACTED] [REDACTED] from receiving FoodShare benefits (FS) for a period of ten years, a hearing was held on September 26, 2013, at Winnebago, Wisconsin, by telephone.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Respondent:

Department of Health Services
Division of Health Care Access and Accountability
1 West Wilson Street
Madison, Wisconsin 53703

By: Kristine DeBlare, Interstate agent
Office of the Inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53701-0309

Respondent:

[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received Wisconsin FS benefits during the time period of July 18, 2012 –February 28, 2013 and March 12, 2013 to May 31, 2013.
2. The respondent applied for FoodShare benefits in the State of [REDACTED] on July 3, 2012 and received benefits in that state from July 3, 2012 to December 31, 2012 and then again from January 14, 2013 to May 31, 2013.
3. The respondent applied for Wisconsin FS benefits on or about July 17, 2012 and in that application did not disclose that she also was receiving FS from the State of [REDACTED].
4. During those periods, the respondent simultaneously received FoodShare (FS) benefits from the State of Florida in addition to the FS received from the State of Wisconsin.
5. On August 23, 2013 the agency issued an Administrative Disqualification Hearing Notice to the respondent at her last address of record advising her of the allegation that she had received FS benefits from the State of [REDACTED] in addition to the FS received from Wisconsin in violation of *FoodShare Wisconsin Handbook*, §3.4.1, “duplicate benefits” (an IPV disqualification for 10 years due to receipt of duplicate benefits). That hearing was scheduled to for October 7, 2013 at 2:30 p.m. to review the allegations. That notice was not returned as undeliverable.
6. Due to some updated information regarding respondent’s address, the agency also mailed on September 27, 2013 to the respondent at [REDACTED] another Administrative Disqualification Hearing Notice with exhibits confirming the hearing scheduled for October 7, 2013 at 2:30. That notice was not returned as undeliverable. See October 7, 2013 letter and attachments from Ms. DeBlare.
7. The respondent failed to appear for the October 7, 2013 and failed to establish any good cause for such failure.

DISCUSSION

An IPV is defined at 7 C.F.R. §273.16(c) as intentionally: making a false or misleading statement or misrepresenting; concealing or withholding facts; or committing any act that constitutes a violation of the Food Stamp Act, federal regulations or any Wisconsin statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons or an authorization to participate (ATP) card.

The Department’s written policy restates federal law, below:

3.14.1 IPV Disqualification

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

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.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,

3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

FoodShare Wisconsin Handbook, §3.14.1.

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

In order for the agency 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 an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence" used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases. It is used in civil cases where a higher standard is required because the outcome could result in serious social consequences for, or harsh effects on an individual. See 32A C.J.S., Evidence §1023. While the terminology for this intermediate standard of proof varies from state to state, it is clear that it is what is required by the FS regulations. See Jackson v. State, 546 So.2d 745 (Fla. App. 2 Dist. 1989).

The Wisconsin Supreme Court viewed the various standards of proof as degrees of certitude. In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (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. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

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.

What is needed to prove the first element, that an IPV as defined in 7 C.F.R. §273.16(c) was committed, is clear. In order to prove the second element, 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 respondent did not appear at the hearing. This circumstance is governed by the regulation at 7 C.F.R. §273.16(e)(4), which states in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if an Intentional Program Violation was committed based on clear and convincing evidence. If the household member is found to have committed an Intentional Program Violation, but a hearing official later determined that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice..., the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

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 what the Department presented at hearing. Based on the evidence as specified in the above Findings of Fact, I find that there is clear and convincing evidence that the respondent committed, and intended to commit, an IPV. As noted above, petitioner failed to report on her Wisconsin FS application that she was receiving FS benefits from the State of ██████ during the same period. The respondent never corrected the failure to report her receipt of FS benefits from ██████. It is evident, therefore, that ██████ ██████ intentionally failed to correctly report the receipt of duplicate FS benefits from two states in order to obtain greater public assistance than she would have been eligible for otherwise.

The respondent has not responded to the 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 a negative inference of the allegations, and find that the agency has met its burden of proof based on the evidence presented.

CONCLUSIONS OF LAW

1. ██████ ██████, the respondent, committed and intended to commit, an Intentional Program Violation (IPV) pursuant to 7 CFR 273.16(c).
2. This is the first such FS violation.
3. The petitioner was disqualified by the FNS for a period of 10 years for intentional receipt of duplication FS benefits from two different states.

THEREFORE, it is

ORDERED

That the IPV is sustained and that the respondent, [REDACTED] [REDACTED], is hereby ineligible to participate in the FoodShare program for a period of ten years, effective the first month following the date of receipt of this decision. These actions are to be completed within 10 days of the date of the Secretary's Final Decision, if adopted therein.

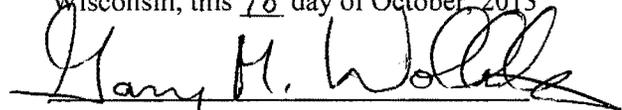
NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH. If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as 'PARTIES IN INTEREST.'

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Milwaukee,
Wisconsin, this 18 day of October, 2013



Gary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals