State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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February 13, 2014

[redacted]

Nadine Stankey
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

Re: Final Decision
[redacted], Case Number FOF - 151082

Dear Parties:

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

Sincerely,

Joan Alt
Supervisor

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

STATE OF WISCONSIN

In the Matter of

Office of Inspector General, Petitioner

vs.

[redacted], Respondent

DECISION

FOF/151082

The attached proposed decision of the Administrative Law Judge dated October 8, 2013, is hereby adopted as the final order of the Department.

APPEAL TO COURT

You may appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI, 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison, Wisconsin, this 13th day of February, 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-5137, Petitioner

v.

[redacted], Respondent

PROPOSED DECISION

FOF/151082

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 Public Assistance Collection Unit to disqualify [redacted] from receiving FoodShare benefits (FS) for one year, a telephone hearing originating in Eau Claire, Wisconsin, was held on September 19, 2013.

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:

Petitioner:

Department of Health Services
Division of Health Care Access and Accountability
1 West Wilson Street
Madison, Wisconsin 53703
By: Nadine Stankey
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

Respondent:

[redacted]

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [redacted]) is a resident of Milwaukee County who received FoodShare in Milwaukee County from May through October 2012.

2. From May through October 2012, the respondent's FoodShare card was debited many times at [redacted], a small corner store that has since been disqualified for trafficking FoodShare with FoodShare recipients.

3. The USDA Food and Nutrition Services (FNS) disqualified [redacted] for FoodShare trafficking because of (1) an unusual number of transactions ending in the same cents value, (2) multiple transactions made by the same purchaser in unusually short periods of time, and (3) excessively large purchases. The store had one scanner and one cash register, little counter space to place items for purchase, and no shopping baskets or carts to allow customers to place multiple items that would add up to large purchases.

4. The respondent made 12 purchases exceeding $20 from [redacted] Grocery from June 17, 2013, through October 18, 2013. On June 17, 2012, her FoodShare card was debited there for $37 after she had used it to purchase $106.25 in food from [redacted] earlier that day and $100 from [redacted] the day before. On July 16, 2012, her card was debited at [redacted] for $53 after she had used it earlier that day to purchase $82.76 from [redacted]. The next day, her card was debited $48.33 at [redacted]. On September 5, 2012, her card was debited at [redacted] for $61.25. Earlier that day she had purchased $263.94 from [redacted]; the next day she purchased $373.23 from [redacted]. On October 16, 2013, her card was debited $30, $15.50, and $6 at [redacted]. The day before she purchased $300.15 at [redacted]. On October 17, 2012, her card was debited $27.80 and $45.25 at [redacted]. On October 18, 2012, her card was debited $22.50 at [redacted]. That same day, she purchased $61.32 and $105.22 from [redacted] and $48.65 from [redacted]. *Exhibit 8.*

5. The respondent's FoodShare card was debited more than once in a day nine times between June 17, 2013 and October 18, 2013.

6. PACU notified the respondent on August 9, 2013, that an Administrative Disqualification Hearing was scheduled to review allegations that she committed an intentional violation of the FoodShare program. She did not appear at the hearing or call or write to cancel it.

DISCUSSION

An intentional policy violation of the FoodShare program occurs when a recipient intentionally does any of 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). Wisconsin law states:

> (3) No person may knowingly issue food coupons to a person who is not an eligible person or knowingly issue food coupons to an eligible person in excess of the amount for which the person's household is eligible.
> (4) No eligible person may knowingly transfer food coupons except to purchase food from a supplier or knowingly obtain food coupons or use food coupons for which the person's household is not eligible.
> (5) No supplier may knowingly obtain food coupons except as payment for food or knowingly obtain food coupons from a person who is not an eligible person.

(6) No unauthorized person may knowingly obtain, possess, transfer or use food coupons.

Wis. Stat. §§ 49.795(3) – (6).

An intentional policy violation can be proved 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 FoodShare agency can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified 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 when the agency mails a written demand letter. 7 C.F.R. § 273.16(b). The FoodShare agency has the burden of proving by clear and convincing evidence both that the recipient committed the violation and that she did so intentionally. 7 C.F.R. § 273.16(e)(6).

PACU-5137 alleges that the respondent trafficked her FoodShare benefits to [redacted], a small corner store that has since been disqualified from the program for trafficking. She did not provide a telephone number before the hearing, her number was not in the Division of Hearings and Appeals computer base, and the number PACU-5137 had for her had been disconnected. As a result, she did not appear in any way at the hearing. When the respondent cannot be located or fails to appear without good cause, FoodShare IPVs proceed without her. 7 C.F.R. §273.16(e)(4). Because this is not a criminal case, the failure to appear can be taken as an admission by the respondent that she cannot defend herself against the allegations.

Large purchases rarely occurred at [redacted] Grocery because it had little counter space and no shopping carts or baskets, it has little fresh produce, its only cooler was broken, and most of the items were inexpensive. Large purchases occurring within minutes of each other were implausible because [redacted] has only one cash register and one scanner. Despite this, the respondent's card was debited 12 times from June 17, 2012, through October 18, 2012, for purchases exceeding $20. Several of those debits occurred on the same day or within a day of when she had made larger purchases from better-stocked (and presumably cheaper stores) such as [redacted], [redacted] [redacted], and [redacted]. *See Findings of Fact No. 4* and *exhibit 8.* It is certainly possible that someone could purchase over $20 from [redacted] at some point, but it is barely conceivable that this could not only occur 12 times in four months, but that many of these occurrences were within a day of when other, even larger, purchases were made at major stores. Moreover, I take the respondent's failure to appear as a concession that she could not defend herself against the allegations brought against her.

"Clear and convincing evidence" is an intermediate standard of proof used in civil cases where the outcome could cause significant consequences for the individual. It is a greater burden than the "preponderance of the evidence" used in most civil cases and less than the "beyond a reasonable doubt" used in criminal cases. PACU has already established that [redacted] trafficked FoodShare benefits. The evidence now before me leaves no doubt that among the benefits it trafficked were the respondent's. It is not plausible that [redacted] obtained access to her benefits without her knowledge because her card continued to be debited there for four months, a period when she used it at other locations. Based upon this, I find that PACU5137 has established by clear and convincing evidence that she violated the rules of the FoodShare program and that she did so intentionally. Because this is her first violation, she is ineligible for benefits for one year.

CONCLUSIONS OF LAW

1. The respondent committed a FoodShare IPV by engaging in FoodShare trafficking.
2. The respondent is disqualified from the FoodShare program for one year.

THEREFORE, it is **ORDERED**

That if this proposed decision is adopted by the Secretary, the IPV is sustained, and the respondent is ineligible to participate in the FoodShare program for one year, 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.

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 Madison,
Wisconsin, this 8 day of October, 2013

Michael O'Brien

Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals