



STATE OF WISCONSIN

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In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION

FOF/152027

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The proposed decision of the Administrative Law Judge dated November 19, 2013, is modified as follows and, as such, is hereby adopted as the final order of the Department.

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 11, 2013, 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General (OIG) to disqualify ██████████ ██████████ from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on November 12, 2013, by telephone.

The issue for determination is whether an Intentional Program Violation (IPV) hearing can be held after the respondent signed and filed a waiver of the hearing.

**PARTIES IN INTEREST:**

**Petitioner:**

Department of Health Services  
Office of the Inspector General  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: Nadine Stankey

**Respondent:**

██████████  
██████████  
██████████  
██████████

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES# ██████████) is a resident of Milwaukee County who received FS during the time period of May - October 2012.
2. During that period the respondent's FS card was used to make purchases at ██████████, a small corner store that since has been disqualified as an FS vendor due to trafficking violations.

3. In August, 2013, the OIG notified the respondent that it suspected her of trafficking FS. It sent her a package that included a form captioned "Waiver of Administrative Disqualification Hearing." The respondent signed the waiver on August 28 and returned it to the OIG.
4. On September 9, 2013 the OIG sent the respondent a "Notice of Disqualification." Two more notices followed from Milwaukee Enrollment Services on September 10 telling her that she was disqualified and that her October FS would be reduced due to her being removed from the household.
5. On September 11 the respondent contacted the OIG and asked to withdraw her waiver. On October 7, 2013, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent trafficked FS.

### 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.

*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).

The OIG erred when it allowed the respondent to withdraw her waiver after the sanction was imposed. The form makes clear that by signing the respondent agreed that a disqualification penalty would be imposed. The federal regulation, 7 C.F.R. §273.16(f)(2)(i) provides:

If the household member suspected of intentional Program violation signs the waiver of right to an administrative disqualification hearing and the signed waiver is received within the timeframes specified by the State agency, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section. The period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification.

Furthermore, §273.16(f)(2)(ii) provides:

No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair hearing decision. The household member, however is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

Under the federal rule described above the Division of Hearings and Appeals does not have authority to rescind the IPV sanction. The issue is when the sanction was imposed. It could be argued that the sanction would be imposed effective October 1, 2013 when the respondent's FS were proposed to be reduced. However, I conclude that the imposition was done when the waiver was entered. §273.16(f)(2)(i) provides that when the waiver is received by the agency, the member *shall* be disqualified, and then the period of disqualification begins the next the month. Thus the regulation makes it a three-part process: (1) agency receives the waiver, (2) agency imposes the sanction, (3) disqualification begins in the next possible month.

On September 9, 2013, the OIG notified the respondent that she was disqualified. October 1 was the date that the imposed sanction would cause the respondent's FS to be reduced. The respondent could appeal that her FS were not calculated correctly for October, but she could not appeal the sanction that was imposed due to her waiver.

The only way that the respondent could contest the imposition of the sanction at this point is to seek review in the Milwaukee County Circuit Court.

#### **CONCLUSIONS OF LAW**

The respondent waived her right to an administrative IPV hearing, and thus the IPV sanction was imposed properly.

**THEREFORE, it is**

**ORDERED**

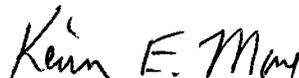
That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year.

#### **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 14 day  
of FEBRUARY, 2014.



Kevin E. Moore, Deputy Secretary  
Department of Health Services