



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Marinette County Department of Human Services, Petitioner

DECISION

vs.

Case # FOF-152425

██████, Respondent

Pursuant to petition filed September 27, 2013, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Marinette County Department of Human Services to disqualify ██████ from receiving FoodShare benefits (FS) for one year, a telephonic hearing was held on Monday, November 4, 2013 at 02:00 PM, at Marinette, Wisconsin. At the request of the parties, the record was held open for ██████ to submit evidence to DHA and the county agency regarding when ██████ moved into her residence and when she notified the county agency of Mr. ██████ moving into her home. The record was then held open for a response by Department representative, Sandra Waugus. Both parties timely submitted their evidence and closing arguments to DHA which are received into the hearing record.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

By: Sandra Waugus, fraud investigator

Marinette County Department of Human Services
Wisconsin Job Center Suite B
1605 University Drive
Marinette, WI 54143

Respondent:

██████
██████
████████████████████

ADMINISTRATIVE LAW JUDGE:

Gary Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Marinette County received FoodShare (FS) benefits from the Marinette Department of Social Services during the time period of February 1, 2013 to April 30, 2013.
2. During her January 30, 2013 FS review applications, the respondent failed to report that her boyfriend, [REDACTED], was residing with her and a member of her FS household. She also failed to report his income.
3. The agency subsequently learned and verified that her boyfriend had been residing in the petitioner's FS household since about January, 2013.
4. The respondent intentionally failed to report her boyfriend as a member of her household and his income while he was residing in her household. As a result of the respondent's intentional misstatements at her January, 2013 review application, the County determined that the respondent's FS household was overpaid in FS benefits (due to larger household size and her boyfriend's unreported income) during the subject period.
5. The County sent a written *Administrative Disqualification Hearing Notice*, dated on October 3, 2013, to the respondent notifying her of an FS disqualification hearing scheduled for November 4, 2013. See Exhibit 2.
6. The respondent did appear and testify at that November 4, 2013 hearing.
7. In the *Notice*, the County alleged that the respondent committed an IPV by misstating or concealing facts from the County with intent by failing to notify the county agency that her boyfriend moved into her residence on or about February 1, 2013.

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.

(Emphasis added).

FoodShare Wisconsin Handbook, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 49.795(2-7).

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. Those disqualified on grounds involving the improper transfer of FS benefits 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 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.

The respondent testified at the November 4, 2013 hearing and made some unsubstantiated allegations during that hearing. The record was held open for Ms. [REDACTED] to submit evidence to DHA and the county regarding when [REDACTED] moved into her residence and when she notified the county agency of Mr. [REDACTED] moving into her home. The record was then held open for a response by Department representative, Sandra Waugus. See above Preliminary Recitals. However, petitioner's was unable to provide any reliable evidence that she had timely reported that [REDACTED] [REDACTED] was residing in her household as of her January 30, 2013 review or that she had reported his income to the county agency. Instead, Ms. [REDACTED] contradicted herself between her testimony and her written submission, and created an excuse when no excuse existed (respondent alleged that Mr. [REDACTED] only used her address earlier to register his vehicle, but the county agency responded that Mr. [REDACTED] has no driver's license and no vehicle.

Ms. [REDACTED] further alleged that she had trouble reporting on the Access Site that Mr. [REDACTED] was in her home as of February 10, 2013, but was unable to provide any evidence whatsoever of her attempts to report that he moved into her residence prior to about March 24, 2013 (when the county agency sent a March 25, 2013 verification request to the respondent). Ms. [REDACTED]'s testimony was simply not credible that she timely reported to the county agency her boyfriend in her residence and his income.

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 failing to timely report her boyfriend in her home and his income, and that this violation was committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program.

CONCLUSIONS OF LAW

1. The respondent violated *FoodShare Wisconsin Handbook*, § 3.14.1 and 7 C.F.R. § 273.16(c), and intended to violate the FS program rule specifying that a FS recipient may not make a false or misleading statement, conceal or withhold facts during a FS review application.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a IPV of the FoodShare program and disqualify the respondent from the program for a period of one (1) year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. See also, 7 C.F.R. sec. 273.16(e)(4) for the specific time limits for claiming good cause for missing the scheduled hearing. Late requests cannot be granted. The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also 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, no more than 30 days after the date of this hearing decision. The address of the Department is: 1 West Wilson Street, Room 651, Madison, WI 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 23rd day of January, 2014

\sGary Wolkstein
Administrative Law Judge
Division of Hearings and Appeals

c: Bay Lake Consortium - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Sandra Waugus - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAMail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 23, 2014.

Marinette County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
swaugus@marinettecounty.com