



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION
Case #: FOF - 152976

Pursuant to petition filed October 21, 2013, under Wis. Admin. Code §HA 3.03, and 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 one year, a hearing was held on Thursday, March 13, 2014 at 01:45 PM, at Milwaukee, Wisconsin. The agency issued an Administrative Disqualification Hearing Notice on November 5, 2013. A hearing was scheduled for December 12, 2013. The respondent did not appear for the hearing. On December 19, 2013, the respondent provided good cause for her non-appearance. The hearing was rescheduled to January 23, 2014. The respondent did not appear for the hearing. On January 30, 2014, the respondent provided good cause for her non-appearance. The hearing was rescheduled for March 13, 2014. Respondent appeared for the hearing on March 13, 2014.

The issues for determination are whether the respondent may rescind a Waiver of Administrative Disqualification Hearing and, if so, whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FS benefits in Milwaukee County from May 5, 2012 through July 5, 2012.
2. On August 27, 2013, the agency issued a Waiver of Administrative Disqualification Hearing to the respondent informing her that the agency determined she had intentionally violated a FS Wisconsin rule by committing an act that is a violation of FS regulations for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FS benefits. It further notified her that she would be immediately disqualified from receiving FS benefits for 12 months. In addition, the notice stated that she could sign the waiver of hearing. The respondent checked the box that states as follows:

“I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result, including a reduction in benefits during the disqualification period.”

The respondent signed the waiver on August 28, 2013 and returned it to the agency.

3. On September 9, 2013, the agency issued a Notice of Disqualification to the respondent informing her that she is disqualified from FS Wisconsin because she waived her right to an administrative disqualification hearing. The notice further informed her of the following:

“If you have not had a Fair Hearing, you may request a Fair hearing for child care payments or FoodShare benefits if you are not satisfied with the agency’s decision. You may request a Fair Hearing in writing or in person with the local agency. You may also request a fair hearing by writing to the Department of Administration, Division of Hearings and Appeals, PO Box 7875, Madison, WI 53707-7875 or by calling, 1-[REDACTED] [REDACTED]. Your request must be received (1) within 45 days of the action’s effective date for child care and, (2) within 90 days of the action’s effective date for FoodShare Wisconsin or at anytime while you are getting FoodShare benefits, if you do not agree with the amount of your benefits. . .”

4. On September 12, 2013, the respondent contacted the agency by phone and requested a fair hearing.
5. On November 5, 2013, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent trafficked FS benefits at [REDACTED]

DISCUSSION

The Department is required to make an Intentional Program Violation (IPV) determination for a recipient’s behavior if it includes:

1. Making false or misleading statements or misrepresenting, concealing or withholding facts to become eligible or to remain eligible for benefits, or
2. Committing any act that constitutes a violation of FoodShare regulations or state statutes relating to the use, presentation, transfer, acquisition, receipt or possession of FS, i.e., trafficking FS.

See FoodShare Wisconsin Handbook (FSWH), § 7.3.2.4.

APPEAL TO COURT

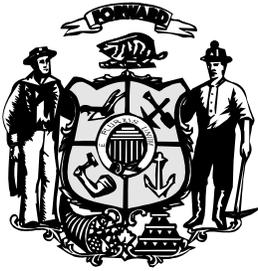
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified 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 Milwaukee,
Wisconsin, this 19th day of March, 2014

\sDebra Bursinger
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
- Nadine Stankey - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 19, 2014.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
NadineE.Stankey@wisconsin.gov