



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

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In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION

Case #: FOF - 154482

██████████, Respondent

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Pursuant to petition filed January 2, 2014, 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 ten years, a hearing was held on Tuesday, February 18, 2014 at 01:30 PM, at Milwaukee, Wisconsin.

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:

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 # ██████████) received FS benefits in Milwaukee County from November 30, 2010 through March 31, 2013.
2. The respondent received Supplemental Nutrition Assistance Program (SNAP) benefits from the state of South Carolina continuously from November, 2009 – April 2013. See Exhibit 1.

3. Respondent submitted an application for FS benefits to the Department on November 30, 2010. Respondent answered “no” when asked “Are you getting FoodShare or Food Stamps this month?” and “Getting Other FS benefits?” See Exhibit 3.
4. Respondent was interviewed by the Department on December 2, 2010 regarding her application for FS benefits. She did not report receiving other FS benefits from another state at that time. See Exhibit 4.
5. During renewal interviews on February 28, 2011 and October 19, 2011, respondent did not report receiving FS or SNAP benefits in any other state. See Exhibits 5 - 8.
6. Respondent submitted a six month renewal form on March 22, 2012. She did not report receiving FS or SNAP benefits in any other state. See Exhibit 9.
7. On October 18, 2012, during a renewal interview, the respondent did not report receiving FS or SNAP benefits in any other state. See Exhibits 10 and 11.
8. On May 3, 2013, the agency issued Notifications of FS Overissuance to the respondent informing her that the agency intends to recoup a total of \$14,695 in FS benefits issued to her for the periods of November 30 – December 31, 2010, January 13 – May 31, 2011, October 19, 2011 – September 30, 2012 and October 12, 2012 – March 31, 2013.
9. On January 9, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent withheld information regarding receipt of benefits in another state.
10. The respondent failed to appear for the scheduled February 18, 2014 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

### 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.

*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).

7 C.F.R. §273.16(e)(4) provides that the hearing shall proceed if the respondent cannot be located or fails to appear without good cause. 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 the evidence that the petitioner presented at hearing.

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.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

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.

Disqualification for receipt of multiple FS benefits is address in the FS Handbook:

A person who makes a false or misleading statement, or misinterprets, conceals or withholds facts including but not limited to identity or place of residence in order to receive multiple FS benefits simultaneously shall be ineligible for a period of 10 years.

Before imposing the 10 year disqualification period:

- A finding of fraud must be made by a state agency, or
- A conviction of fraud must be entered by a state or federal court.

The Administrative Disqualification Hearing (ADH) process, including the offer to sign the ADH waiver, F-16039, may be used for imposing this penalty.

See FS Handbook § 3.14.1.2.

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 making false statements to the agency regarding her residence and her receipt of multiple FS benefits in Wisconsin and South Carolina. She answered in the negative on numerous occasions when asked by the agency if she was receiving duplicate benefits. The evidence clearly demonstrates that she was receiving benefits from South Carolina at the time she applied for and renewed her benefits in Wisconsin. The petitioner has met its burden of establishing by clear and convincing evidence that the respondent committed and intended to commit an intentional program violation. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for ten years.

### **CONCLUSIONS OF LAW**

The respondent violated, and intended to violate, the FS program rule specifying that an individual may not make false statements or conceal facts in order to receive multiple FS benefits simultaneously.

**NOW, THEREFORE, it is ORDERED**

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed an IPV of the FoodShare program and disqualify the respondent from the program for ten years, effective the first month following the date of receipt of this decision.

### **REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

### **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).

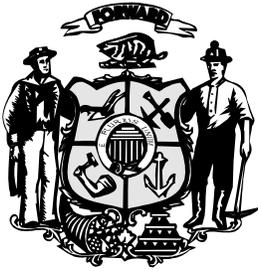
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 19th day of March, 2014

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\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  
Kristine DeBlare - 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  
[Kristine.DeBlare@wisconsin.gov](mailto:Kristine.DeBlare@wisconsin.gov)