



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

Office of the Inspector General, Petitioner

DECISION

v.

[REDACTED] Respondent

FOF/154849

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 17, 2014, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify [REDACTED] from receiving FoodShare benefits (FS) for a period of ten years, a hearing was held on March 06, 2014, at Milwaukee, Wisconsin.

NOTE: The record was held open to give the Office of Inspector General an opportunity to supplement the record with the Individual Participation History of [REDACTED]. It has been marked as Exhibit 12 and entered into the record.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV) by providing false information regarding her child’s residence in order to receive duplicate benefits.

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, Room 651  
Madison, Wisconsin 53703

By: Megan Ryan, PARIS Specialist  
Office of the Inspector General  
Department of Health Services  
1 West Wilson Street  
Madison, WI 53701

Respondent:

[REDACTED]

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Respondent is a resident of Milwaukee County who received FoodShare benefits intermittently in Wisconsin between May 1, 2011 and May 31, 2013. (Exhibits 10 and 12)
2. On September 11, 2012, the Respondent signed an application summary, in which she indicated that a child, ■■■ was in her household. (Exhibit 6)
3. On December 4, 2012, the Respondent signed a Six Month Report Form, indicating that ■■■ was in her household. (Exhibit 7)
4. On January 31, 2014, the Office of Inspector General (OIG) sent the Respondent an Administrative Disqualification Hearing Notice, indicating that she provided false information regarding her son in order to receive duplicated Food Stamps. (Exhibit 1)

## 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.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

*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).

In order for the agency 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 an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence" used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases. It is used in civil cases where a higher standard is required because the outcome could result in

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (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. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

*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.

#### *Respondent's Non-appearance*

The Respondent did not appear for this hearing. This circumstance is governed by the regulation in 7 C.F.R. §273.16(e)(4), which states in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. *Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence.* If the household member is found to have committed an intentional program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice,

the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, *the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.*

*Emphasis added*

The hearing in this case took place on March 6, 2014. The Administrative Disqualification Hearing Notice was sent to the Respondent at [REDACTED], advising her of the date and time of the hearing. The notice further told the Respondent to contact “Ms. Ishii” with a phone number where the Respondent could be reached for the hearing. The Respondent did not contact ALJ Ishii with a phone number.

The Division of Hearings and Appeal obtained a phone number for the Petitioner of [REDACTED] that was printed on its file. An attempt was made to contact the Respondent at that number, but the outgoing message indicated that the phone number was disconnected or no longer in service. Consequently, the hearing took place in the Respondent’s absence.

The Respondent did not contact the administrative law judge and did not submit anything within 10 days of the hearing date. As such, it is found that the Respondent did not have good cause for her non-appearance.

#### *The Applicable Regulations*

In the case at hand, the OIG asserts that the Respondent provided false information about her child’s residence in order to receive duplicate FoodShare benefits. For this alleged violation, the OIG wishes to ban the Respondent from the FoodShare program for a period of ten years.

Per 7 C.F.R. §273.16(b)(5), “an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.” *See also FoodShare Wisconsin Handbook, § 3.14.12*

Because the OIG does not assert that the Respondent provided false information about the Respondent’s residence, it instead alleges that she provided false information about the residence of her child, in order to receive duplicate benefits. As such, the provisions of 7 C.F.R. §273.16(b)(5) do not apply in this case. The more applicable regulations are found in of 7 C.F.R. §273.16(c) and 7 C.F.R. §273.16(b)(1)(i)-(iii). This determination is consistent with a decision issued by Kevin E. Moore, Deputy Secretary for the Department of Health Services, in case FOF-152764.

As indicated above, 7 C.F.R. §273.16(c) states that intentional program violations, “shall consist of having intentionally:

- (1) Made a false or misleading statement or misrepresented, concealed or withheld fact; or
- (2) Committed any act that constitute a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device)” .

It should be noted that Wis. Stat. §49.795(2) provides in relevant part, “No person may misstate or conceal facts in a food stamp program application or report of income, assets or household circumstances with intent to secure or continue to receive food stamp benefits.”

7 C.F.R. §273.16(b)(1)(i)-(iii) states that individuals who have been found to have committed intentional program violations shall be ineligible to participate in food stamp programs, “for a period of twelve

months for the first intentional Program violation...”, “for a period of twenty-four months upon the second occasion of any intentional Program violation..” and “permanently for the third occasion of any intentional Program violation.”

There is no indication in the record that the Respondent has prior IPV violations, so if the agency meets its burden to prove the Respondent provided false information concerning her son’s residence, it would be appropriate to impose a 12 month sanction.

*The Merits of OIG’s Claim*

In order to prove that the Respondent lied about where her child resided, in order to receive duplicate benefits, the OIG must show the following:

1. That she reported the child in her household in Wisconsin during the time in question,
2. That she received benefits for the child in Wisconsin during the time in question,
3. That the child was receiving benefits in another state,
4. That the Respondent knew the child received benefits in another state, AND
5. That the child was not, in fact, residing with the Respondent in Wisconsin during the time in question.

The time period in question is May 1, 2011 to May 31, 2013.

1. *Did the Respondent Report the child as being in her residence during the time in question?*

The signed application summary and six month report form that are marked Exhibits 6 and 7 respectively are reliable as regularly kept records of the Department of Health Services. They are sufficient to establish that in September 2012 and again in December 2012, the Respondent report her son, [REDACTED], as being part of her household.

There is no documentation showing that the Respondent reported this information prior to September 2012 or after December 2012.

2. *Did the Respondent receive benefits for the child in Wisconsin?*

Exhibit 10, the Case Comments printout is reliable as a regularly kept record of the Department of Health Services. It contains the name and case number for the Respondent at the top.

Exhibit 12 is an Individual Participation History Printout showing that Respondent’s son, [REDACTED] received FoodShare benefits on Respondent’s case number between May 1, 2011 and May 31, 2013.

Based upon the foregoing, it is found that the Respondent received FoodShare benefits for [REDACTED] in Wisconsin during the time in question.

3. *Did the child receive Food Stamp benefits in another state and if so, did the Respondent know?*

In an e-mail dated September 6, 2013, the Respondent indicated that she did not know that her child received Food Stamps in another state. While the e-mail might be reliable as a statement of a party opponent, it does not prove the children received benefits in another state, since the Respondent did not actually confirm that fact and indicates that she is relying upon what the State of Wisconsin told her about [REDACTED] receiving benefits in Mississippi. (See Exhibit 9)



**THEREFORE, it is**

**ORDERED**

That IPV case number [REDACTED] is sustained, and Respondent, Octavia Muhammad, is hereby ineligible to participate in the FoodShare program for a period of one year, 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). That good cause request must be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

**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. 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 Milwaukee,  
Wisconsin, this 31st day of March, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 31, 2014.

Office of the Inspector General  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[megan.ryan@wisconsin.gov](mailto:megan.ryan@wisconsin.gov)