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[REDACTED]

**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/154851

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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 (OIG) an opportunity to supplement the record with a Confirmed Assistance Group Eligibility Printout. It has been marked as Exhibit 15 and entered into the record.

The issue for determination is whether the Respondent committed an Intentional Program Violation (IPV) by providing false information 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]  
3337 N. 4th St.  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FoodShare benefits in Wisconsin between January 17, 2011 to May 31, 2013. (Exhibit 14)
2. On June 26, 2012, the Respondent electronically signed an application summary indicating that she was not receiving FoodShare benefits from another state. In electronically signing the application summary, the Respondent indicated, "I understand the penalties for giving false information or breaking the rules." (Exhibit 4)
3. On January 9, 2013, the Respondent electronically signed an application summary indicating that she was not receiving FoodShare benefits in another state. (Exhibit 5)
4. The Respondent received FoodStamps in Louisiana for the months of August 2012 through May 2013. (Exhibit 3)
5. On January 13, 2014 the OIG sent the Respondent an Administrative Disqualification Hearing Notice indicating that it believed she provided false information in order to receive duplicate benefits between January 17, 2011 and May 31, 2013, in the amount of \$5579.00. (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.

An attempt was made to contact the Respondent at [REDACTED], 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.

On March 27, 2014, it was discovered that ALJ Ishii dialed the incorrect number and that the correct number for the Respondent was [REDACTED]. ALJ Ishii contacted the Respondent on that same day. The Respondent verified her address as [REDACTED], but claimed that she did not get notice of the hearing.

Given that the notice was sent to the correct address it is presumed that the Respondent properly received the notice. Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, “summons, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.” Further, “the mailing of a letter creates a presumption that the letter was delivered and received.” State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.w.2d 362 (1994)

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.

It should be noted that the Respondent was advised that a decision would be mailed to her regarding this matter and that if she wished to pursue the good cause issue further, that she should follow the rehearing instructions at the bottom of this decision. She was also advised that she could contact Legal Action of Wisconsin, if she needed assistance.

#### *The Merits of OIG’s Case*

The case at hand asserts that the Respondent lied about whether she was receiving FoodShare/Food Stamps in another state in order to receive duplicate benefits in Wisconsin between January 17, 2011 and May 31, 2013. 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*

In order to prove its case the OIG must show:

1. That the Respondent provided false information about her residence,
2. That the Respondent received benefits in Wisconsin during the time in question, AND
3. That the Respondent received benefits in another state during the time in question.

The period in question is January 17, 2011 to May 31, 2013.

Exhibit 14 is a Confirmed Assistance Group Eligibility History printout. It is reliable as a regularly kept business record of the Department of Health Services and it establishes that the Respondent received FoodShare benefits in Wisconsin between January 17, 2011 and May 31, 2013.

Exhibit 3 contains what appears to be a screen shot print out from the Louisiana D.S.S. /P.F.S. – L’AMI system, of a screen entitled Benefit History Inquiry for a person with the same name and relative age as the Respondent. It is reliable as a regularly kept business record of the State of Louisiana. Given that the name and relative age of the person listed in the Louisiana record is the same as the Respondent, it is reasonable to conclude that the Louisiana record is for the Respondent.

The Benefits History from Louisiana shows that the Respondent was receiving FoodStamp benefits in Louisiana for the months of August 2012 to May 2013. As such, between August 2012 and May 2013, the Respondent either provided false information to the State of Wisconsin about her residence or she provided false information to the State of Louisiana about her residence, either way it is a violation. In addition, the Respondent provided false information in her January 2013 application summary when she indicated that she did not receive FoodShare/Food Stamp benefits in another State. (See Exhibit 5)

It is presumed that a person knows and intends 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. There is nothing in the record to rebut the presumption that Respondent knew that the misrepresentations that she made regarding her residence and whether she was receiving benefits in another state would result in her receipt of duplicate benefits from Louisiana and Wisconsin, at the time she applied for benefits in Wisconsin.

#### **CONCLUSIONS OF LAW**

The OIG has shown, by clear and convincing evidence, that the Respondent intentionally provided false information in order to receive duplicate Foodshare/Food Stamp benefits between August 2012 and May 2013.

**THEREFORE, it is**

**ORDERED**

That the IPV in claim [REDACTED] is sustained, for violations occurring between August 2012 and May 2013 only, and that Respondent, [REDACTED], is hereby ineligible to participate in the FoodShare program for a period of 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). 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 28th 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 28, 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)