



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Milwaukee Enrollment Services, Petitioner

vs.

DECISION

Case #: FOF - 155303

██████████ – No appearance, Respondent

Pursuant to petition filed February 7, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Milwaukee Enrollment Services to disqualify ██████████ – No appearance from receiving FoodShare benefits (FS) for ten year, a hearing was held on Tuesday, March 25, 2014 at 10:45 AM, 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:

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

Respondent:

██████████ – No appearance

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of NA who received FS benefits in Milwaukee County from August 26, 2009 through October 31, 2013.
2. From April, 2009 through October, 2013, respondent received FS or SNAP benefits for herself and her family from the ██████████.

3. On August 26, 2009, the respondent applied for FS benefits in Wisconsin. She reported that she and her family reside in a shelter. She reported not getting FS benefits from another state. The respondent's residence at the [REDACTED] was verified by the organization by letter indicating that the respondent and her family had been residents of the shelter since August 25, 2009.
4. On September 2, 2009, the agency issued a Notice of Decision informing the respondent that she will receive \$153 for August, 2009 and \$793/month effective September, 2009.
5. On September 4, 2009, the respondent reported to the [REDACTED] that she and her family moved to [REDACTED]. On September 14, 2009, the [REDACTED] agency issued a Notice of Decision to the respondent at the new address informing her that she would receive benefits of \$793/month.
6. On September 18, 2009, the agency contacted the State of [REDACTED] Dept. of Human Services. The agency verified that there had been no activity on respondent's husband's case since March, 2009. The agency also contacted the [REDACTED] who verified that the family has an open case in [REDACTED] for FS and Medicaid and received benefits for the month of September.
7. On September 19, 2009, the [REDACTED] agency issued a Notice of Decision to the respondent notifying her that her FS benefits in [REDACTED] would end effective October 1, 2009 because she no longer resides in [REDACTED].
8. In May, 2011, the respondent completed a renewal. She did not report residence in another state or getting benefits from another state.
9. Respondent received FS benefits in [REDACTED] from September, 2011 – May, 2012 and October, 2012 – May, 2013. She reported an address of [REDACTED] to the [REDACTED] agency in October, 2013.
10. On January 11, 2012, the respondent completed an ACCESS application. Respondent reported she is homeless and a resident of Wisconsin. She reported not getting FS benefits in another state. On January 13, 2012, the agency issued a Notice of Decision informing the respondent that she would receive \$430 for January, 2012 and \$668/month effective February, 2012.
11. On December 27, 2012, the respondent completed an online ACCESS renewal. She did not report any changes in address, residency or getting benefits in another state. On December 31, 2012, the agency issued a Notice of Decision informing the respondent that she will continue to get \$668/month in FS benefits.
12. On June 1, 2013, the [REDACTED] agency re-opened the respondent's FS benefits in [REDACTED]. Benefits continued through October, 2013.
13. On June 27, 2013, the respondent submitted an online renewal application. She did not report any changes in address, residency or getting benefits in another state.
14. On July 19, 2013, the agency issued a Notice of Decision informing the respondent that she will receive \$452 in FS benefits for July, 2013 and \$668/month effective August, 2013.
15. On October 10, 2013, the respondent reported a new address of [REDACTED] to the [REDACTED]. The [REDACTED] agency verified with [REDACTED] Dept. of Human Services that respondent's husband has an open SNAP case in [REDACTED].

16. On November 1, 2013, the agency issued Notifications of FS Overissuance to the respondent.
17. Respondent received duplicate FS benefits in Wisconsin and █████ in September, 2009 and June – October, 2013. Respondent received duplicate FS benefits in Wisconsin and █████ from September, 2011 – May, 2012 and October, 2012 – May, 2013.
18. On February 14, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent intentionally misrepresented facts about receiving benefits in other states.
19. The respondent failed to appear for the scheduled March 25, 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., 4th 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.

The agency seeks to impose a 10 year disqualification from the FS program. The federal regulations at 7 CFR § 273.16(b)(5) state:

“ . . .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.”

7 CFR § 273.16(b)(5).

The agency presented sufficient evidence to demonstrate the respondent misrepresented her residency and her address and misrepresented that she was not receiving benefits in other states when she applied for and renewed her Wisconsin FS benefits between September, 2009 and October, 2013. At the same time the respondent reported to the Wisconsin agency that she and her family were homeless, she reported [REDACTED] and [REDACTED] addresses and residency to those state agencies. The agency presented sufficient evidence to demonstrate that the respondent was reporting an [REDACTED] and/or [REDACTED] address to the [REDACTED] and [REDACTED] agencies and she received duplicate benefits from those agencies at the same time that she received benefits in Wisconsin. The agency produced records from [REDACTED] and [REDACTED] showing the benefit issuance history as well as case comments regarding her residency. I conclude the respondent committed and intended to commit an IPV by misrepresenting her residency to receive duplicate benefits.

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, and that she misrepresented her residency in order to

receive duplicate benefits. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for ten years.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that misrepresentation of eligibility in order to receive FS benefits is prohibited.
2. The respondent intentionally misrepresented her residency in order to receive duplicate benefits. The agency may impose a 10 year disqualification from the FS program for this violation.

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 first 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 23rd day of April, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

- c: Miles - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Pamela Hazley - 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 April 23, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Pamela.Hazley@dhs.wisconsin.gov