



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155803

PRELIMINARY RECITALS

Pursuant to a petition filed February 28, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on April 07, 2014, at Green Bay, Wisconsin.

The issue for determination is whether the Department erred in its termination of the petitioner's FS effective March 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Diane Van Asten
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. In October 2013, the Brown County Sheriff investigated petitioner for allegedly using an incarcerated friend's FS benefits. This conduct would be an intentional program violation under program rules.
3. In December 2013, the Sheriff sent petitioner a citation and summons to appear in court. Petitioner received this. The summons included a letter explaining that the conduct alleged would be grounds for a FS disqualification if petitioner were to be found guilty. See ex. #1.
4. Petitioner did not appear at the hearing on February 12, 2014. The court found petitioner guilty.
5. On February 14, the agency sent notice to petitioner informing him that because of the finding of guilt in the circuit court it would impose an IPV and a 12 month sanction.
6. On February 17, 2014, the agency sent a notice to petitioner informing him that his FS would end on March 1, 2014.
7. Petitioner appealed.

DISCUSSION

The process of imposing an IPV is detailed in the Code of Federal Regulations at 7 CFR 273.16. The Federal regulations provide for an imposition of an IPV through several mechanisms. An agency may initiate an administrative disqualification hearing (see 7 CFR 273.16(e)); or by waiver (see 7 CFR 273.16(f)). But, an IPV may also be based on a civil or criminal court action establishing the facts supporting the IPV in a court of appropriate jurisdiction. See 7 CFR 273.16(g). The Federal rule state "[t]he State agency should conduct administrative disqualification hearings in cases in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system...." 7 CFR 273.16(a).

In this case, the FS agency and the prosecuting authority proceeded with a prosecution of this matter as a civil forfeiture matter as a violation of Wisconsin Statute § 30.05(2). Petitioner did not appear at the hearing on the matter despite a court summons being issued. Along with that summons sent by the Brown County Sheriff's Office, petitioner was sent a detailed notice indicating that finding of guilt could be barred from the FS Program. The court found petitioner guilty as part of a default judgment. It is clear based on the documentation submitted by the agency that the conduct alleged by the Brown County Sheriff was a violation of FS rules and would constitute an IPV.

The Federal rule also allows for the agency's imposition of an IPV after a finding of guilt by a court:

(7) If a court fails to impose a disqualification or a disqualification period for any intentional Program violation, the State agency shall impose the appropriate disqualification penalty specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section unless it is contrary to the court order.

7 CFR 273.16(a)(7), see also § 273.16(g)(2). This is what occurred here.

Petitioner's argument at hearing was that he did not know about the court hearing or did not understand his obligations. He explained that he would like to fight the charge. I note that it appears from a review of the CCAP online service, that petitioner has petitioned the circuit court to have this matter reopened following the default judgment. If this matter is reopened and results in a final determination other than guilt, then the Department's basis for the IPV finding will be nullified. Petitioner would then be wise to reapply for FS and appeal again if he is denied. But, at this point, the finding of guilt of a FS related offense stands. Under the rules, and under the procedure followed here, the agency may impose the IPV and sanction petitioner as it has done.

CONCLUSIONS OF LAW

The Department did not err in termination petitioner's FS as the IPV has been established in the circuit court.

THEREFORE, it is

ORDERED

That this matter is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

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, Wisconsin 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 (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 Madison,
Wisconsin, this 24th day of April, 2014

\sJohn P. Tedesco
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 April 24, 2014.

Brown County Human Services
Division of Health Care Access and Accountability