STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Eau Claire County Department of Human Services, Petitioner

vs. DECISION

Case #: FOF - 155921

[redacted], Respondent

Pursuant to petition filed March 10, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Eau Claire County Department of Human Services to disqualify [redacted] from receiving FoodShare benefits (FS) for one year, a hearing was held on Tuesday, May 13, 2014 at 01:15 PM, at Siren, 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:

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

Respondent:
[redacted]

ADMINISTRATIVE LAW JUDGE:
Michael O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES #[redacted]) is a resident of Burnett County who received FS benefits in Eau Claire County from November 22, 2013 through February 28, 2014.
2. On March 10, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent incorrectly reported the number of persons in her household.

3. The petitioner reported to the county agency that her mother moved out of her house on October 22, 2013.
4. The petitioner and her mother lived together at various periods, including from October 2013 through February 2014.
5. The petitioner received $855 in FoodShare that she was not entitled to from November 22, 2013, through February 20, 2014, because she falsely reported that her mother had moved out of her house.

DISCUSSION

The county agency contends that the respondent committed an intentional policy violation of the FoodShare program by claiming that her mother had moved out of her house when she had not. Because the amount of FoodShare one receives depends upon net income and household size, the respondent received $855 more in FoodShare that she was entitled to from November 22, 2013 through February 28, 2014, if her mother remained in her house. She does not dispute this calculation.

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).

To establish that an FS recipient has committed an IPV, the petitioner 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 the respondent committed an IPV, the evidence induce a firm conviction that each of the two elements exist even though a reasonable doubt that the opposite is true may also exist.

To prove the second element, intention, the agency must provide 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). A person is generally 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 violated the FS Program's rules but committed the violation anyway.

There is no doubt that if the respondent's mother remained in the respondent's house, a trailer owned by the respondent's mother, the respondent intentionally violated the FS program's rules. The only plausible reason to report that her mother left if she did not would be to obtain additional benefits. The respondent implicitly recognized this by limiting her defense to presenting evidence that her mother had in fact moved out. This evidence is implausible.

The respondent did not testify because she did not feel well, which left her voice inaudible. I offered to postpone the matter, but she wished to go ahead. Her mother provided all of the testimony. The respondent submitted an unsigned note to her worker, supposedly from a man her mother had moved in with. There was no way to confirm the validity of this statement because the man allegedly did not want to get involved in the case. The respondent's mother testified that this man was her daughter's husband, and her daughter might not approve of the situation. Keeping the note anonymous makes little sense because the respondent and her mother were in constant contact, so if her mother had moved out, the respondent surely knew where she lived. Soon after this, the respondent submitted another note, this time from a woman that her mother had allegedly moved in with. The respondent's mother said she paid rent at these places, but she had no receipts. Nor did either of these persons testify to confirm her story.

The respondent's mother said she moved out because her daughter was 18 and could not get credit to live anywhere else. Why her mother would stay with her daughter's husband and some other woman rather than remain her own trailer, which had two bedrooms was never explained. Surely her daughter, who had a young child and was employed, could have used her help.

The testimony by the respondent's mother contradicts the only believable evidence provided in the hearing. That testimony came from the manager of the trailer park the respondent and her mother lived in. He testified that in January 2014, he repaired frozen pipes going into the petitioner's trailer. The repair took more than one day, and each time he went to the trailer the respondent's mother was there. He also testified that he saw her car there consistently from October 2013 through February 2014. That vehicle was not always in the same place on the

property, indicating that it was driven and reparked. In addition, it was there at various hours of the day and night, indicating that she lived there. He also testified that the respondent's mother paid rent directly to him. The respondent's mother claimed that the respondent paid rent to and that the utilities were in the respondent's name. She had no receipts to verify any of this.

The agency has established by clear and convincing evidence that the respondent intentionally violated FS program rules. This violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that a person cannot provide false information that allows her to receive additional FoodShare benefits.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

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 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). 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 Madison, Wisconsin, this 19th day of June, 2014

_____

\sMichael O'Brien
Administrative Law Judge
Division of Hearings and Appeals

c: Great Rivers Consortium - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Aaron Borreson - email

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 19, 2014.

Eau Claire County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Aaron.Borreson@co.eau-claire.wi.us