



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

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In the Matter of

Rock County Department of Social Services, Petitioner

vs.

DECISION

Case #: FOF - 157959

██████████ Respondent

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Pursuant to petition filed May 5, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Rock County Department of Social Services to disqualify ██████████ ██████████ from receiving FoodShare benefits (FS) for one year, a hearing was held on Thursday, July 10, 2014 at 01:00 PM, at Janesville, 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:

Rock County Department of Social Services  
Mary Donahue  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

Respondent:

██████████  
██████████  
████████████████████

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # ██████████) is a resident of Rock County who received FS benefits in Rock County in at least February, 2014.
2. The respondent verbally consented to sell FS benefits belonging to DS, a FS recipient and the father of petitioner's son, while DS was incarcerated. Exhibit 9.

3. The respondent told DS that she had sold the FS, but instead used the FS benefits to pay for expenses for their son. *Id.*
4. On June 9, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent sold FS on behalf of DS. Exhibit 7.

### 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. §§ 946.92(2).

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).

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., 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.

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 record establishes that the respondent agreed to sell FS belonging to DS. However, the respondent testified at hearing that she did not, in fact, sell them to a third party, but instead converted them to her own use to buy food for the minor child of DS and the respondent. The respondent acknowledged that she is not a member of DS’s FS household, and noted that he supplied her with his PIN so that she could use his card. The federal FS regulation at 7 CFR §274.7(a) states that FS benefits “may be used only by the household, or other persons the household selects, to purchase eligible food for the household. The Quest Card and PIN Responsibility Statement, which DS presumably signed off on, states that, “[a]ny FoodShare account transaction made by myself...or by any other person to whom I voluntarily give my QUEST card and PIN, is considered authorized and the benefits will not be replaced.” *Id.*

I find that it is readily apparent that DS can authorize others to make purchases for him. And, while the circumstantial evidence alludes to potential trafficking, the record contains no direct evidence of the sale of DS’s FS benefits to another party. Nor is there evidence that the respondent utilized DS’s FS benefits for anyone’s benefit other than DS’s son. Based upon the foregoing, I cannot find that the evidence clearly and convincingly establishes that the respondent intended to commit an IPV. Accordingly, the agency cannot disqualify the respondent from the FoodShare program for one year.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, there is no clear and convincing evidence that respondent committed or intended to commit an IPV.

**NOW, THEREFORE, it is** **ORDERED**

That the petitioner’s determination of an intentional program violation is reversed, and the petition for review is hereby dismissed.

**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 28th day of August, 2014.

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals

c: Southern Consortium - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
Mary Donohue - 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](mailto:DHAMail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 28, 2014.

Rock County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[maryh@co.rock.wi.us](mailto:maryh@co.rock.wi.us)