STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION
Case #: FOF – 158901

[redacted], Respondent

Pursuant to petition filed July 9, 2014, under Wis. Admin. Code §HA 3.03, and 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 one year, a telephonic hearing was held on Tuesday, August 26, 2014 at 01:15 PM, at Milwaukee, Wisconsin. At the request of the parties, the record was held open for both parties to submit their consecutive closing arguments to the Division of Hearings and Appeals (DHA) which are received into the hearing record.

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:

Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Respondent:
[redacted]

ADMINISTRATIVE LAW JUDGE:
Gary Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES #[redacted]) is a resident of Milwaukee County who received FS benefits in Milwaukee County from August 1, 2009 through December 1, 2013 for a FS household of four.
2. During his four FS review applications and four six month report forms (SMRFs) during the period of 2009 - 2013, the respondent failed to report his accurate household composition or his income from his band, [redacted] Entertainment and [redacted].
3. The Milwaukee agency sent November 20, 2013 and December 23, 2013 verification requests to the petitioner requesting income verification from his 2009-2012 tax returns and verification that his three sons resided with him in his FS household (and not residing with his wife at a different address).
4. The respondent intentionally failed to verify with any reliable evidence (tax returns or other reliable sources) his income from his band or the accurate members of his FS household. As a result of the respondent's intentional misstatements or omissions on his review applications and SMRFs during the period of 2009 to 2013, Milwaukee County determined that the respondent's FS household was overpaid in FS benefits (due to smaller FS household size and his unreported income) during the subject period.
5. The County sent a written *Administrative Disqualification Hearing Notice*, dated on July 14, 2014 to the respondent notifying him of an FS disqualification hearing scheduled for August 26, 2014.
6. In that *Notice*, the Department alleged that the respondent committed an IPV by failing to report his accurate income from his band, [redacted] Entertainment, [redacted] and [redacted], and failing to report his accurate FS household composition.
7. The respondent did appear and testify at that August 26, 2014 hearing.

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.

(Emphasis added).
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).

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. 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 respondent testified at the August 26, 2014 hearing and made some unsubstantiated income allegations during that hearing, and repeatedly digressed to marital issues with his wife. However, Mr. [redacted] was unable to refute that he failed repeatedly to provide any reliable evidence (such as tax returns requested by the county agency) that he had no income whatsoever from his band. Mr. [redacted] was also unable to refute that he failed to timely report on his annual review applications and SMRFs that his sons were no longer residing in his FS household, but instead resided with his wife, [redacted], at a different residence. Instead, he simply made oral statements during the hearing alleging that there was no income (other than income allegedly given to him by his mother).

The record was held open for written closing argument by each party to DHA. Mr. [redacted] submitted a written closing argument that basically alleged that his wife was stating false accusations about him which resulted in this IPV case. However, the IPV was pursued by the Department due to his ongoing to report with reliable evidence his accurate income and accurate FS household composition. The respondent was unable to undermine the Department's IPV case. Furthermore, in her written closing argument, OIG representative Lynn Dahlgren persuasively argued why the Department's one year FS sanction should be upheld.

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 by failing to timely report his accurate income and accurate FS household composition, and that these violations were committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that respondent failed to report accurate income and accurate FS household composition.

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 9th day of October, 2014

\sGary Wolkstein
Administrative Law Judge
Division of Hearings and Appeals

c: Office of the Inspector General - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Lynn Dahlgren - 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 October 9, 2014.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
lynn.dahlgren@wisconsin.gov