



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION

Case #: FOF - 158902

██████████, Respondent

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:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Milwaukee County who received FS benefits in Milwaukee County from February 27, 2012 through July 31, 2013.
2. The respondent was received FS benefits in Louisiana between January 1, 2011 and July 31, 2013.
3. On July 8, 2014 the respondent met with Megan Ryan from the Office of the Inspector General. During that meeting the respondent prepared a written statement stating that he gave his girlfriend, ██████████, his property when he was in jail in Louisiana. This included his social security card and identification. He believed that ██████████ used his identity and social security number without his

permission. When Megan Ryan asked him why he had not reported this to the police, he stormed out of the room.

4. Megan Ryan testified that men who have a child in common with a woman will often use their identity as a form of currency. Instead of paying child support or to avoid being pursued for child support, the man will allow the mother to add him to her FS household. This provides the mother with additional FS benefits each month. Megan Ryan investigates suspected fraud in FS cases. She frequently sees that fact pattern.
5. On July 15, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent provided false information to receive duplicate FS benefits in two states.
6. The respondent failed to appear for the scheduled August 20, 2014 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.
7. At the hearing the Administrative Law Judge (ALJ) called the phone number the respondent previously gave the Office of Inspector general. The respondent could not be reached at that number. The hearing notice directed the respondent to call the ALJ to provide a phone number for the hearing at least 48 hours prior to the hearing. The respondent never contacted the ALJ before or after the August 20, 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.

FoodShare Wisconsin Handbook, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

A specific provision applies to this case. 7 C.F.R. §273.16(b)(5) provides: "... 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."

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.

In this case the respondent failed to appear at the IPV hearing. The respondent knew about the hearing as he had met with Megan Ryan from the Office of the Inspector General approximately one month prior to the hearing. During that meeting the respondent prepared a written statement. In his written statement the respondent said that while he was in jail in Louisiana he gave his girlfriend, [REDACTED], his property containing his social security card and id. He believed that [REDACTED] had used his identity without his permission. When Megan Ryan confronted him about why he had not reported this information to the police, he stormed out of the room, and later failed to appear for the IPV hearing.

The respondent's statement that he was a victim of identity theft by his girlfriend is not credible for many reasons. The respondent failed to appear at the hearing. Had the respondent appeared at the hearing, the respondent could have clarified why he did not report this information to the police. The respondent could have also explained why he had stormed out of the room at that particular point. He did not storm out of the room until he was being confronted about something that did not make any sense. I further note that this is a civil case, and not a criminal case. Because the respondent failed to appear I am left to infer that the respondent did not provide an explanation for why he had not reported this identity theft to the police because he was not in fact a victim of identity theft.

The respondent's failure to report this alleged identity theft to the police also weighs against his credibility. When a person reports a crime to the police, the police investigate that crime. If during the course of the police investigation, the police learn that the complainant or person reporting the crime lied to them, they can refer criminal obstructing charges to the district attorney's office. The respondent is familiar with the criminal justice system as he was in jail in Louisiana. A person who first lied to Wisconsin to get benefits he was not entitled to receive, then lied to Louisiana to get benefits he was not entitled to receive there, and finally lied to a fraud investigator from the office of the inspector general would not report a crime that did not happen to the police. It then follows that the respondent would storm out of the room when confronted with the fact that he did not report this alleged crime to the police and later not appear at a hearing on this intentional program violation.

Megan Ryan further testified that men sometimes use their identities as a form of currency. If they are unable to pay child support or do not want a woman to pursue them for child support they allow the woman to list them on her FS case in order to get additional monthly FS benefits. Megan Ryan could not say that this had happened here, but it is a common scenario she observes. I do not know if the respondent either gave [REDACTED] permission to use his identity in order for [REDACTED] to receive additional benefits in Louisiana or if he was truly living with [REDACTED] in Louisiana while receiving Wisconsin and Louisiana FS benefits. However, for the purposes of this case that is immaterial. The respondent's explanation is not credible and either way he provided false information to receive duplicate FS benefits in two states.

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 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 ten years.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that provide truthful information and not receive duplicate FS benefits in two states.
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 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

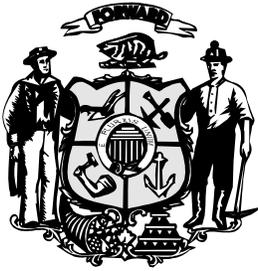
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified 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 29th day of August, 2014

\sCorinne Balter
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
- Megan Ryan - 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 August 29, 2014.

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