



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Office of the Inspector General, Petitioner

vs.

██████████ Respondent

DECISION
Case #: FOF - 159258

The attached proposed decision of the Administrative Law Judge dated October 7, 2014, is hereby adopted as the final order of the Department.

Pursuant to a petition filed July 23, 2014, under Wis. Admin. Code § HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of Inspector General ["OIG"] to disqualify ██████████ from receiving FoodShare benefits ["FS"] for 10 years, a Hearing was held via telephone on Tuesday, September 16, 2014 at 12:45 PM. At OIG's request the record of this matter was held open for 2 weeks.

The issue for determination is whether a 10 year IPV disqualification sanction may be imposed on Respondent.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701
BY: Megan Ryan, PARIS Agent

Respondent:

██████████

ADMINISTRATIVE LAW JUDGE:

Sean Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Respondent (CARES # [REDACTED]) is a resident of Milwaukee County who has received FS benefits in the State of Wisconsin. Exhibits #1, #2, #3, #5 & #6.
2. Respondent was receiving FS in the State of [REDACTED]; Respondent left [REDACTED] on or about October 19, 2012; Respondent provided [REDACTED] with a written notice dated October 19, 2012 stating that she was moving out of state and that her case should be closed effective October 19, 2012; that written notice used Respondent's correct identity¹ and place of residence; that written notice was received by [REDACTED] on October 26, 2012 but "someone here [in [REDACTED]] dropped the ball" and Respondent's FS did not close until March 2013. Exhibits #4 & #9.
3. On November 12, 2012 Respondent applied for FS in Wisconsin using her correct identity and place of residence; Respondent received FS in Wisconsin starting in November 2012. Exhibits #1, #2, #3, #5 & #6.

DISCUSSION

Federal law provides that the only time a 10 year IPV disqualification sanction may be imposed is as follows:

"(5) Except as provided under paragraph (b)(1)(iii) of this section, 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."

7 C.F.R. § 273.16(b)(5) (2014).

In this matter OIG does not even allege that Respondent made a fraudulent statement or representation with respect to her identity or place of residence. Further, the evidence in the record of this matter does not support a conclusion that Respondent made a fraudulent statement or representation with respect to her identity or place of residence. Therefore, a 10 year IPV disqualification sanction may not be imposed on Respondent.

OIG may request another IPV Hearing, with proper notice to Respondent, if it wishes to pursue some other IPV disqualification sanction against Respondent.

It is noted that written state policy provides as follows:

"3.14.1.2 IPV Disqualification for Receipt of Multiple FS Benefits

A person who makes a false or misleading statement, or misrepresents, conceals or withholds facts including but not limited to identity or place of *residence* in order to receive multiple FS benefits simultaneously shall be ineligible for a period of 10 years.

Before imposing the 10 year disqualification period:

- A finding of fraud must be made by a state agency, or
- A conviction of fraud must be entered by a state or federal court." (*italics in original*)

¹ Respondent's last name changed at some point after October 2012 due to marriage. Exhibits #2 & #3.

FoodShare Wisconsin Handbook, [“FWH”] 3.14.1.2.

State policy, as quoted above, differs significantly from the federal law quoted above. State policy does not limit a 10 year disqualification to cases involving fraudulent statements or representations with respect to the identity or place of residence -- whereas federal law does. Where federal law and state policy differ federal law must control.

When a Decision holds that a manual or handbook provision is invalid or limited under a statute or federal regulation the Decision must be submitted as a Proposed Decision. Wis. Admin. Code § HA 3.09(9)(b)1. (February 2013). Therefore, this Decision will be submitted as a Proposed Decision. The Secretary of the Wisconsin Department of Health Services [“DHS”] will make the Final Decision in this matter.

CONCLUSIONS OF LAW

For the reasons discussed above, a 10 year IPV disqualification sanction may not be imposed on Respondent.

NOW, THEREFORE, it is ORDERED

That a 10 year IPV disqualification sanction may not be imposed on Respondent and the Respondent’s action is REVERSED.

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.

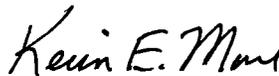
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

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, 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 11 day
of November, 2014.



Kevin E. Moore, Deputy Secretary
Department of Health Services



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Office of the Inspector General, Petitioner

vs.

PROPOSED DECISION

Case #: FOF - 159258

██████████, Respondent

Pursuant to a petition filed July 23, 2014, under Wis. Admin. Code § HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of Inspector General ["OIG"] to disqualify ██████████ from receiving FoodShare benefits ["FS"] for 10 years, a Hearing was held via telephone on Tuesday, September 16, 2014 at 12:45 PM. At OIG's request the record of this matter was held open for 2 weeks.

The issue for determination is whether a 10 year IPV disqualification sanction may be imposed on Respondent.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701
BY: Megan Ryan, PARIS Agent

Respondent:

██████████

ADMINISTRATIVE LAW JUDGE:
Sean Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Respondent (CARES # [REDACTED]) is a resident of Milwaukee County who has received FS benefits in the State of Wisconsin. Exhibits #1, #2, #3, #5 & #6.
2. Respondent was receiving FS in the State of [REDACTED]. Respondent left [REDACTED] on or about October 19, 2012; Respondent provided [REDACTED] with a written notice dated October 19, 2012 stating that she was moving out of state and that her case should be closed effective October 19, 2012; that written notice used Respondent's correct identity¹ and place of residence; that written notice was received by [REDACTED] on October 26, 2012 but "someone here [in [REDACTED]] dropped the ball" and Respondent's FS did not close until March 2013. Exhibits #4 & #9.
3. On November 12, 2012 Respondent applied for FS in Wisconsin using her correct identity and place of residence; Respondent received FS in Wisconsin starting in November 2012. Exhibits #1, #2, #3, #5 & #6.

DISCUSSION

Federal law provides that the only time a 10 year IPV disqualification sanction may be imposed is as follows:

"(5) Except as provided under paragraph (b)(1)(iii) of this section, 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."

7 C.F.R. § 273.16(b)(5) (2014).

In this matter OIG does not even allege that Respondent made a fraudulent statement or representation with respect to her identity or place of residence. Further, the evidence in the record of this matter does not support a conclusion that Respondent made a fraudulent statement or representation with respect to her identity or place of residence. Therefore, a 10 year IPV disqualification sanction may not be imposed on Respondent.

OIG may request another IPV Hearing, with proper notice to Respondent, if it wishes to pursue some other IPV disqualification sanction against Respondent.

It is noted that written state policy provides as follows:

¹ Respondent's last name changed at some point after October 2012 due to marriage. Exhibits #2 & #3.

“3.14.1.2 IPV Disqualification for Receipt of Multiple FS Benefits

A person who makes a false or misleading statement, or misrepresents, conceals or withholds facts including but not limited to identity or place of *residence* in order to receive multiple FS benefits simultaneously shall be ineligible for a period of 10 years.

Before imposing the 10 year disqualification period:

- A finding of fraud must be made by a state agency, or
- A conviction of fraud must be entered by a state or federal court.” (*italics in original*)

FoodShare Wisconsin Handbook, [“FWH”] 3.14.1.2.

State policy, as quoted above, differs significantly from the federal law quoted above. State policy does not limit a 10 year disqualification to cases involving fraudulent statements or representations with respect to the identity or place of residence -- whereas federal law does. Where federal law and state policy differ federal law must control.

When a Decision holds that a manual or handbook provision is invalid or limited under a statute or federal regulation the Decision must be submitted as a Proposed Decision. Wis. Admin. Code § HA 3.09(9)(b)1. (February 2013). Therefore, this Decision will be submitted as a Proposed Decision. The Secretary of the Wisconsin Department of Health Services [“DHS”] will make the Final Decision inn this matter.

CONCLUSIONS OF LAW

For the reasons discussed above, a 10 year IPV disqualification sanction may not be imposed on Respondent.

NOW, THEREFORE, it is

ORDERED

that, if this *Proposed Decision* is adopted as the Final Decision in this matter by the DHS Secretary, a 10 year IPV disqualification sanction not be imposed on Respondent and is REVERSED.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLMENTED AS SUCH.

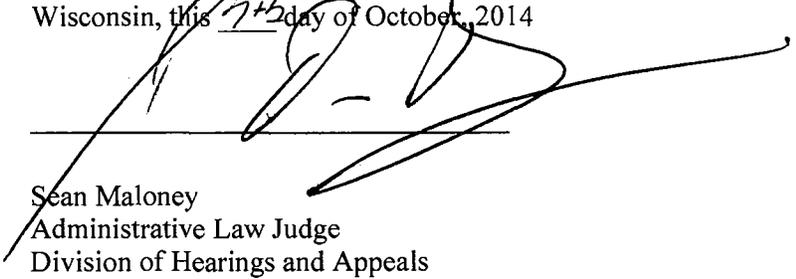
If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make.

Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Health Services for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 7th day of October, 2014



Sean Maloney
Administrative Law Judge
Division of Hearings and Appeals