



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

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In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████ Respondent

DECISION  
Case #: FOF - 159821

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Pursuant to a petition filed August 14, 2014, under 7 C.F.R. §273.16, to review a decision by the Office of the Inspector General (OIG) to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of ten years, a hearing was held on October 8, 2014, by telephone.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV) by duplicating FS receipt in two states.

**PARTIES IN INTEREST:**

Petitioner:

Office of the Inspector General  
Department of Health Services  
P.O. Box 309  
Madison, WI 53701  
By: Megan Ryan

Respondent:

██████████  
██████████  
██████████

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
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 October 1, 2012 through August 31, 2013.
2. On September 4, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent received duplicate FS in Wisconsin and Mississippi.

3. The respondent applied for FS in Milwaukee on November 16, 2011. Her mailing address was in care of her cousin L.T. FS were opened, and the respondent used her FS card in Milwaukee until February 20, 2012. She then started to use the card in Mississippi in March, 2012, and used it there until April 19, 2012. Balance inquiries were made on the card between April 19 and August 1, 2012, but no purchases were made.
4. In early August, 2012, the respondent's Wisconsin FS card was reported lost and a new one was issued to the cousin's mailing address. Thereafter the card was used exclusively in Wisconsin until it was cancelled in August, 2013.
5. On-line renewals were done on the respondent's Wisconsin FS case in August, 2012, February and May, 2013, and July 5, 2013. The signatures were electronic; there is no actual signature on any of the renewals to compare to the respondent's signature.
6. The respondent applied for FS in Mississippi in November, 2012. She received FS there through 2013.
7. The Wisconsin agency did an overpayment claim against the respondent for the period February 20 through August 31, 2013. The notice was sent to the respondent and she received it in Mississippi. Soon after the notice was sent a person who identified herself as the respondent spoke with Ms. Ryan of the OIG. The caller told Ms. Ryan that she gave her card and PIN to her cousin but the cousin was supposed to use it only once. The respondent did not appeal the overpayment claim.

### 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. 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).

To find that the respondent intentionally violated the FS program’s rules, the evidence must induce a firm conviction in the decision maker although there may be a reasonable doubt that this 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.

Based upon the record before me, I find that the petitioner has not established by clear and convincing evidence that the respondent intentionally violated FS program rules. While there are questions about the respondent’s actions, there is not enough to convince me that this respondent did the on-line renewals and used the Wisconsin FS card in August, 2012 and thereafter, or that she allowed another person to do so.

The respondent testified that in November, 2011, she went to the FS agency in Milwaukee in person to apply for FS. The problem is that the application was done on-line, and more than likely the respondent was then told that she had to appear in person to obtain a temporary FS card and expedited FS. The respondent testified that she does not know how to use a computer. Either the respondent is lying or someone helped her do the on-line application. That someone may have been her cousin, who thus would have known the on-line password.

The respondent testified that she moved back to Mississippi in February, 2012 and took her FS card with her. That testimony is verified by the respondent’s use of the card in Mississippi beginning in February, 2012 through April, 2012. After the card was used to purchase food in April in Mississippi, its only use was for balance inquiries – eighteen of them between then and July 31, 2012. This period of time truly is puzzling. Wisconsin



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 16th day of October, 2014

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\sBrian C. Schneider  
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**

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The preceding decision was sent to the following parties on October 16, 2014.

Office of the Inspector General  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
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