



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████ Respondent

DECISION
Case #: FOF - 159822

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 the Intentional Program Violation (IPV) of misrepresenting his residence to obtain duplicate FS in different 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:

██████████ (Did not appear)

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES# ██████████) is a resident of Mississippi who received FS benefits in Milwaukee County from July 13, 2012 through June 30, 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 Wisconsin on July 10, 2012 using the on-line process, noting a Wisconsin address and that he received no FS elsewhere. He reported the Wisconsin address in subsequent filings on August 20, 2012, December 3, 2012, and May 16, 2013. Interviews were done by telephone.
4. The respondent also received FS in Mississippi between July, 2012 and June, 2013.
5. The Mississippi FS card was used exclusively in Mississippi and the Wisconsin card in Wisconsin.
6. The respondent failed to appear for the scheduled October 8, 2014 Intentional Program Violation (IPV) hearing because all notices to the last known Mississippi address were returned as undelivered. However, overpayment notices sent to him in 2013 were not returned, and the respondent did not contact the agency to contest those claims.

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).

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

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 the Milwaukee County Circuit Court. 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 20th day of October, 2014

\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 20, 2014.

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