



**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 - 160465

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Pursuant to petition filed September 23, 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 ██████████ from receiving FoodShare benefits (FS) for one year, a hearing was held on Thursday, October 23, 2014 at 09:30 AM, at Milwaukee, Wisconsin.

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:

Mayumi Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # ██████████) was deemed eligible for FoodShare benefits in between October 1, 2010 and August 31, 2014. (Exhibit B)

2. On September 22, 2013, the Petitioner completed an on-line ACCESS renewal, in which she indicated she was living in Milwaukee, Wisconsin. (Exhibit E)
3. On September 23, 2014, the Department of Health Services, Office of Inspector General (OIG), prepared an Administrative Disqualification Hearing Notice alleging that between July 1, 2013 and August 31, 2014, the Petitioner committed an intentional program violation by withholding information concerning a move to Mississippi. (Exhibit I)

## DISCUSSION

### *Respondent's Non-appearance*

The Respondent did not appear for this hearing. This circumstance is governed by the regulation in 7 C.F.R. §273.16(e)(4), which states in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. *Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence.* If the household member is found to have committed an intentional program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, *the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.*

*Emphasis added*

The hearing in this case took place on October 23, 2014. The Respondent was advised of the date and time of the hearing, in an Administrative Disqualification Hearing Notice that was sent to her at a post office box in Milwaukee, Wisconsin. Ms. Johnson indicated that this was the Respondent's last known mailing address and that the agency did not receive any returned mail.

The Respondent did not appear at the hearing and the Respondent did not contact the Division of Hearings and Appeals within 10 days to explain her failure to appear. As such, it is found that the Respondent did not have good cause for her non-appearance.

### *The Merits of OIG's Claim*

An IPV is defined at 7 C.F.R. §273.16(c) as intentionally: making a false or misleading statement or misrepresenting; concealing or withholding facts; or committing any act that constitutes a violation of the Food Stamp Act, federal regulations or any Wisconsin statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons or an authorization to participate (ATP) card.

The Department's written policy restates federal law, below:

### **3.14.1 IPV Disqualification**

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

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.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

*FoodShare Wisconsin Handbook*, §3.14.1.

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

In order for the agency 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 an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence" used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases. It is used in civil cases where a higher standard is required because the outcome could result in

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (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. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

*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).

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 it is true.

In the case at hand, OIG alleges that the Petitioner moved to Mississippi and failed to report / withheld information about that change in residence between July 1, 2013 to August 31, 2014.

In order to prove such an allegation, OIG needs to show:

- 1) That the Petitioner reported her address as being in Wisconsin over the 13 month period between July 1, 2013 and August 31, 2014 and
- 2) That the Petitioner moved to Mississippi.

With regard to what the Respondent reported as her residence, the only document provided was one on-line ACCESS Six Month Report Form from September 2013. There were no other applications or renewals provided showing what she reported as her address after September 2013. There were no copies of any verification that the Respondent might have provided, to substantiate her address after September 2013. Consequently, I have no way of knowing what Respondent reported as her address after September 2013.

It should be noted that Wisconsin is reduced reporting state. As such, changes of address need only be reported when the Six Month Report Form is completed or at renewal per FoodShare Wisconsin Handbook §6.1.1.2:

“As long as a food unit’s total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as ‘reduced reporting’ requirements”

There is no claim by OIG that all members of the Respondent’s household were elderly, blind or disabled and there is no claim by OIG that Respondent’s income ever exceeded 130% of FPL. As such, the Respondent did not need to report any changes of residence, between July 2013 and September 2013.

With regard to whether the Respondent moved to Mississippi, OIG’s evidence again falls a little short. First, Ms. Johnson indicated that the Petitioner’s last known address was in Wisconsin. This undermines the claim that Petitioner has moved to Mississippi.

OIG also relied upon a spread sheet that purports to show that the Petitioner used her Wisconsin EBT card almost exclusively in Mississippi during the time in question. (Exhibit C) However, the spread sheet does not contain sufficient information. The spread sheet shows month by month, the total dollar amount of FoodShare benefits redeemed and the city in which the transactions occurred. However, there is nothing in that spreadsheet identifying it as a document related to Petitioner. Further, without the dates of transaction, there is no way to know whether the transactions occurred on one or two days or on 15 different days. Consequently, it is not sufficient to prove the Petitioner moved to Mississippi.

OIG provided a more detailed spreadsheet to the Division of Hearings and Appeals, but did not provide a copy of that spreadsheet to the Respondent. As such, the more detailed spreadsheet cannot be considered in this decision. Even if that spreadsheet could be considered, it would not be sufficient to show the Petitioner used her EBT card in Mississippi, because it does not contain any information linking it to the Petitioner, no name and no EBT card number. The spreadsheet I have starts at cell E, with Card/Entry Mode.

**CONCLUSIONS OF LAW**

The OIG has not met its burden to prove, by clear and convincing evidence, that the Respondent committed an IPV by failing to report a change of address between July 1, 2013 and August 31, 2014.

**NOW, THEREFORE, it is ORDERED**

That IPV Case Number [REDACTED] is hereby reversed and that the Department of Health Services cease enforcement efforts.

**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 3rd day of November, 2014.

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\sMayumi Ishii  
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
- Sherrie Johnson - email





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 3, 2014.

Office of the Inspector General  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[sherrie.johnson@dhs.wisconsin.gov](mailto:sherrie.johnson@dhs.wisconsin.gov)