



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Milwaukee Enrollment Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 160823

Pursuant to petition filed September 24, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. §273.16, to review a decision by the Milwaukee Enrollment Services to disqualify ██████████ ██████████ ██████████ from receiving FoodShare benefits (FS) for one year, a telephonic hearing was held on Tuesday, November 4, 2014 at 09:15 AM.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

PARTIES IN INTEREST:

Petitioner:

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205
By: Pamela Hazley, HSPC Sr.

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FS benefits in Milwaukee County from approximately May 2, 2012 through March 31, 2014.
2. On April 13, 2013 the respondent completed a renewal for her FS. She failed to report that she began working for A+ Home Care on April 5, 2013.
3. On September 27, 2013 respondent completed a six month review for FS. She failed to report that she began working for A+ Home Care on April 5, 2013 and working for IRIS on May 31, 2013.
4. On September 26, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent failed to report earned income.
5. The respondent failed to appear for the scheduled November 4, 2014 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

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).

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.

Respondent did not appear at the hearing; hence the agency’s evidence was uncontradicted. The agency argued that respondent had consistently underreported her income and pointed out the discrepancies between the wages reported to the state by respondent’s employers and the information that respondent submitted to the agency. In this case, the wage information provided to the state shows that respondent was paid significantly more than she reported during the course of her periodic benefit reviews. As her income level was used to determine the amount of her monthly FS allotment, it is clear that respondent received a benefit from underreporting her income.

In order to conclude that an IPV has been committed, I am required to reach a firm conviction, based on clear evidence, that respondent committed a program violation and that she intended to do so. The information presented in the state wage report indicates that respondent clearly underreported her income with her FS renewals. Misstating facts with the intention of receiving or continuing to receive FS benefits and failing to report changes in income are violations of the FS program under Wis. Stat. §§49.795(2) and (2m). Both have occurred here and there is no doubt that a violation of the FS program has occurred.

That respondent intended to commit an IPV is also clear. Respondent consistently understated her income and consistently allowed the agency to continue issuing benefits to her based on the understated income. It would be hard to convince any trier of fact that a wage earner would be unaware of how much money she was earning each pay period or that she did not know the names of her employers. She did nothing to correct this information.

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 20th day of November, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals

c: Miles - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Pamela Hazley - email



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The preceding decision was sent to the following parties on November 20, 2014.

Milwaukee Enrollment Services
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Division of Health Care Access and Accountability
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