



2. On October 1, 2014 Petitioner sent Respondent an Administrative Disqualification Hearing Notice alleging that Respondent violated FoodShare program regulation by failing to report receipt of Kinship Care benefits and by failing to report the return of her husband to work.
3. On May 14, 2012 Respondent completed on online FoodShare and health benefits renewal form. On that form she reported that her husband was employed at a company in ██████ Wisconsin.
4. On August 9, 2012 Respondent completed a six month report form that indicated that her husband had stopped working on July 13, 2012 due to illness.
5. On February 7, 2013 Respondent completed an online renewal for that asked about employment of household members. Respondent reported employment for only herself. The form also asked about Kinship Care benefits and Respondent answered 'No' as to receipt of those benefits.
6. Payroll records for Petitioner's husband indicated that he was off of work in the second half of September 2012 through the end of October 2012 but returned to work in November 2012.
7. Respondent began receiving Kinship Care benefits for children in the home in February 2012.
8. Respondent failed to appear for the scheduled November 13, 2014 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.
9. This is Respondent's second IPV; the first being in 1993 or 1994.

### 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).

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).

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.

Based upon the record before me, I find that Petitioner has established by clear and convincing evidence that the Respondent intentionally violated FoodShare program rules. Simply, when asked about household income on an online renewal form, Respondent failed to disclose both earned and unearned income. This violation was the second such violation committed by Respondent. Therefore, Petitioner correctly seeks to disqualify Respondent from the FoodShare program for two years.

### **CONCLUSIONS OF LAW**

1. That Respondent violated, and intended to violate, the FoodShare program rule specifying that a FoodShare not conceal or withhold facts.
2. That the violation specified in Conclusion of Law No. 1 is the second such violation committed by Respondent.

**NOW, THEREFORE**, it is

**ORDERED**

That Petitioner’s determination is sustained, and that Petitioner may make a finding that Respondent committed a second IPV of the FoodShare program and disqualify Respondent from the program for two years, effective the first month following the date of receipt of this decision.

**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 16th day of December, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals

- c: Capital Consortium - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- Alex Premo - email



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

Juneau County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
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