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[REDACTED]

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

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In the Matter of

Milwaukee Enrollment Services  
, Petitioner

DECISION

v.

FOF/162496

[REDACTED] Respondent

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 8, 2014, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the Milwaukee Enrollment Services to disqualify [REDACTED] [REDACTED] from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on January 28, 2015, 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:

Department of Health Services  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Pamela Hazley, HSPC Sr.  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

Respondent:

[REDACTED]  
[REDACTED]  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received FS in Milwaukee County during the time period of December, 2011 through June, 2014.

2. The respondent received FS from at least November 2011 through June 2014. She reported no earned income for herself on a Six Month Review Form (SMRF) dated November 3, 2011. However, she was working at [REDACTED] from September 2011 forward.
3. During a May 2012 case review, the respondent stated in writing to the agency that her last check from her employer was received April 13, 2012, and that she was done working except for possible "pool" hours. Per later wage verification, this was a misrepresentation of her wages. *See*, Exhibit 1B, paychecks dated April 27, May 11, May 25, June 8, 2012. On her November 2012 SMRF, the respondent reported that her employer had not called her in to work, which was false.
4. At her May 7, 2013, annual review, the respondent reported no earned income for herself. This was a false report. *See*, Exhibit 1B, paychecks dated April 26, May 10, May 24, June 7, 2013.
5. On October 16, 2013, the respondent reported that she was receiving no earned income. This was a false report. The state's employer wage cross-match database showed third quarter 2013 wages of \$7833, and fourth quarter 2013 wages of \$7386 for the respondent.
6. On March 28, 2014, the respondent filed an online review, and reported no *household* income. This was a false report. The state wage database shows that the respondent's husband/household member had gross earnings in both the first and second quarters of 2014 (\$2,750, \$3,250 respectively). On August 21, 2014, the Department issued FoodShare Overpayment Notices to the respondent, advising that she had been overpaid FS from December 1, 2011 through June 30, 2014.
7. The Department issued Enrollment and Benefits booklets to the respondent on May 18, 2011, June 8, 2013, and April 2, 2014. The booklets all advise the respondent of the need to timely and accurately reported income and upward changes to income to the Department. The Department also issued other notices to the respondent that reiterate the income change reporting requirement. *See*, Exhibit 1B, notices.
8. The respondent's meandering testimony was not credible.

### DISCUSSION

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.*

Wisconsin statutes provide, in relevant part, as follows:

(2) No person may misstate or conceal facts in a food stamp program application or report of income, assets or household circumstances with intent to secure or continue to receive food stamp program benefits.

(2m) No person may knowingly fail to report changes in income, assets or other facts as required under 7 USC2015(c)(1) or regulations issued under that provision.

...

Wis. Stat. §§ 49.795(2-7).

The county 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 county 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 serious social consequences for, or harsh effects on an individual. See 32A C.J.S., Evidence §1023. While the terminology for this intermediate standard of proof varies from state to state, it is clear that it is what is required by the FS regulations. See *Jackson v. State*, 546 So.2d 745 (Fla. App. 2 Dist. 1989).

The Wisconsin Supreme Court viewed the various standards of proof as degrees of certitude. 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. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

*Kuehn*, 11 Wis.2d at 26. 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.

Thus, the first element to be proved is that an IPV as defined in 7 C.F.R. §273.16(c) was committed. To prove the second element, 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. 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.

This recipient violated FS program rules that require timely and accurate reporting of income and upward income changes. This non-reporting was intentional, because the Department repeatedly advised her in writing of the needs to timely and correctly report income. She also made obvious false statements on her periodic review documents.

At hearing, the respondent's meandering testimony included her statement that she had a heart attack in August 2014, and therefore could not work. This is irrelevant, because it is after the period of alleged fraudulent activity. She explicitly denied working and receiving income from her employer in May, 2013. When the agency produced copies of her May 2013 paychecks, the respondent stated that someone else must have punched in for her at work. Assuming that this unlikely event occurred, the respondent did not return the allegedly fraudulent paycheck to her employer, or even report this event to her employer. The respondent then stated, regarding the May 24, 2013 paycheck, "I've never seen this check." That strikes this Judge as improbable. The respondent further declared that she was not actually working in 2014, due to recovery from knee surgery. Corroboration of this assertion was not presented. She went on to testify that her 2014 income was paid sick leave. This also does not help the respondent, because paid sick leave is income that she was supposed to report, but did not. Finally, the respondent further damaged her credibility by complaining that she did not contest the overpayment determinations because she never got her FoodShare Overpayment Notices (August 21, 2014). However, the Department's contemporaneously kept Case Comments describe telephone contacts from the respondent on November 10 and December 4, 2014, complaining about the overpayment determinations.

The Department correctly seeks a one year sanction here.

#### **CONCLUSIONS OF LAW**

1. The respondent violated, and intended to violate, the FS program rule specifying that income of household members must be correctly and timely reported to the Department.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

**THEREFORE, it is**

**ORDERED**

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, 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, Wisconsin 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 (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 30th day of January, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



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

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 30, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[Pamela.Hazley@dhs.wisconsin.gov](mailto:Pamela.Hazley@dhs.wisconsin.gov)