



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

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In the Matter of

Green County Department of Human Services, Petitioner

vs.

████████████████████

DECISION

Case #: FOF - 162712

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Pursuant to petition filed December 17, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. §273.16, to review a decision by the Green County Department of Human Services to disqualify ██████████ ██████████ from receiving FoodShare benefits (FS) one year, a telephonic hearing was held on Tuesday, February 10, 2015 at 09:15 AM.

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

**PARTIES IN INTEREST:**

Petitioner:

Green County Department of Human Services  
N3152 State Road 81  
Monroe, WI 53566  
By: Tamara Haring, ESS

Respondent:

██████████  
██████████  
████████████████████

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # ██████████) is a resident of Green County who received FS benefits in Green County (the agency) from at least May 1, 2014 through December 31, 2014 as a household of 4.

2. Prior to May 1, 2014 respondent received FS in Wisconsin as well. On April 10, 2014 respondent came in to the agency and left a message stating that she needed a close out letter from the Wisconsin FS agency as she had moved to Illinois. See Exhibit 3.
3. On April 22, 2014 the agency issued a notice to respondent indicating her FS would end effective June 1, 2014 as her household was no longer residing in Wisconsin. See Exhibit 4. That notice was returned to the agency as the respondent's address in Illinois was not valid. Her Wisconsin FS case closed on May 31, 2014.
4. On June 5, 2014 respondent reapplied for FS in Wisconsin. See Exhibit 5. She again reported that she and her 3 children resided in Wisconsin. She received FS in Wisconsin from June – December 2014 as a household of 4.
5. On October 23, 2014 the respondent provided a letter to the agency from the School District of Monroe stating that 2 of her children were enrolled in school there for the 2014-2015 school year, and that they resided with respondent in Monroe, Wisconsin. See Exhibit 8.
6. On October 28, 2014 the School District of Monroe provided documentation to the agency regarding respondent's children and their enrollment in various schools. See Exhibit 9. The information states that as of July 21, 2014 2 of respondent's children were enrolled in school there for the 2014-2015 school year, but that they never attended that school during the 2014-2015 school year. The information also shows the children's father requesting health information from the School District of Monroe to facilitate the children's enrollment in an Alabama school. See also Exhibit 10.
7. The agency received information showing that petitioner's 2 children were enrolled in a school in Illinois as of March 12, 2014 and that they finished out that school year there. See Exhibit 10.
8. The agency received information showing that 2 of petitioner's children were enrolled and attending school in Alabama as of August 2014. See Exhibit 10.
9. On January 5, 2015, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent provided false information to receive FS the household was not entitled to. See Exhibit 11.
10. The respondent failed to appear for the scheduled February 10, 2015 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., 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 be a reasonable doubt as to their existence.

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.

I find that the respondent misrepresented where her children were living in order to receive more FS in Wisconsin. The school information shows that 2 of the children were in school in Illinois from March 12, 2014 through the end of the school year. Additional information shows the 2 children in school in Alabama as of August 2014 and ongoing through to at least February 2015. There is no information to show that the children resided in Wisconsin with the respondent during the relevant timeframes here, despite the continuous affirmative reporting by the respondent to the agency that they were. The respondent has not responded to those allegations either by way of this hearing or in response to letters that the agency mailed to her advising her of the allegations. I will take her lack of response or appearance as an admission of the allegations and find that the agency has met its burden of proof with the evidence it has presented that the intentional program violation occurred.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

#### **CONCLUSIONS OF LAW**

1. The respondent violated, and intended to violate, the FS program rule specifying that an intentional program violation of the FoodShare program occurs when a recipient intentionally makes a false or misleading statement, or misrepresents, conceals or withholds facts.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.
- 3.

**NOW, 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, 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 4th day of March, 2015

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals

- c: Southern Consortium - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- Tamara Haring - email



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 4, 2015.

Green County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[tharing@gchsd.org](mailto:tharing@gchsd.org)