



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

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In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION

Case #: FOF - [REDACTED]

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Pursuant to petition filed December 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 [REDACTED] [REDACTED] [REDACTED] from receiving FoodShare benefits (FS) one year, a telephonic hearing was held on Tuesday, February 10, 2015 at 01:30 PM at , 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:

[REDACTED]  
[REDACTED]  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Gary Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES [REDACTED]) was a resident of [REDACTED] County who received FS benefits in [REDACTED] County from April 30, 2012 to September 30, 2012, and then to February 28, 2013.

2. The respondent completed her FS application and interview in Wisconsin on May 10, 2012, and reported to the agency that she had just moved to Wisconsin from the State of Georgia but did not have a FS case in Georgia or any other state. However, respondent was already receiving FS from the State of Georgia.
3. The respondent received FS benefits in Georgia since at least December 16, 2010, and completed recertifications for her FS benefits from the States of Georgia.
4. The respondent was continuing to use her Georgia FS benefits when she applied for Wisconsin FS benefits on May 10, 2012.
5. The Department received an interstate match with the State of Georgia in early 2013 confirming that the respondent was open for FS (SNAP) benefits in Georgia.
6. On December 29, 2014, the petitioner prepared and sent to the respondent an Administrative Disqualification Hearing Notice scheduling the hearing for February 10, 2015 at 1:30 p.m., and alleging that respondent provided false information in order to receive FS from duplicate states.
7. 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).

A specific provision applies to this case. 7 C.F.R. §273.16(b)(5) provides: "... an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years."

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. 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).

To find that the respondent intentionally violated the FS program’s rules, the evidence must induce a firm conviction in the decision maker although there may be a reasonable doubt that it 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 the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules by deliberately reporting a false address to receive FS in two states at the same time. It is undisputed that the respondent applied for and received FS in both Wisconsin and Georgia, and there is substantial evidence that it was not a case of identity theft as the respondent clearly was spending time in both states. Therefore the petitioner correctly seeks to disqualify the respondent from the FS program for ten years.





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

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The preceding decision was sent to the following parties on March 13, 2015.

Office of the Inspector General  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
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