



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

---

In the Matter of

Portage County Department of Human Services , Petitioner

vs.

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

Case #: FOF - 163200

---

Pursuant to petition filed January 15, 2015, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Portage County Department of Human Services (the agency) to disqualify [REDACTED] from receiving FoodShare benefits for a period of one year, a hearing was held on Tuesday, March 3, 2015 at 9:00 a.m. at Stevens Point, Wisconsin.

NOTE: The record was held open until the end of the day on March 3, 2015, to give the agency an opportunity to submit a copy of a Food Stamp History Disbursement Printout and a copy of the Respondent's February 1, 2015 renewal. They have been marked as Exhibits 4 and 5 respectively.

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:**

Portage County Department of Human Services  
By: Kyle Patterson, Benefit Recovery Specialist  
817 Whiting Avenue  
Stevens Point, WI 54881

**Respondent:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Mayumi Ishii  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. The Respondent (CARES # [REDACTED]) received FoodShare benefits from February 2014 through January 2015. (Exhibit 4)
2. On February 1, 2014, the Respondent completed an ACCESS application for benefits, indicating that no one in her household had any income from a job. The respondent electronically signed the application, indicating that the information was correct and complete and that she understood the penalties for giving false information or breaking the rules. (Exhibit 5)
3. On June 28, 2014, the Respondent completed an ACCESS Six Month Report Form (SMRF), but did not report any changes in income. The Respondent electronically signed the application indicating that the information was correct and complete. (Exhibit 1)
4. At the time the Respondent completed her renewal, she had not earned any income for two weeks. (Exhibit 2)
5. In the first half of 2014, the Respondent was intermittently working for a cable company. She earned income in the amount of \$91.04 for the week ending on Saturday, January 4, 2014<sup>1</sup>. She did not earn income again until the week ending June 14, 2014, when she earned \$90.12. There was another short break and then Respondent earned income the week ending July 5, 2014, in the amount of \$795.00. From that time on, the Petitioner worked relatively consistently, receiving income every other week. (Exhibit 2)
6. On January 22, 2015, the agency prepared an Administrative Disqualification Hearing Notice, asserting that the Respondent committed an intentional program violation by lying on her SMRF about her employment with a cable company, between August 1, 2014 and January 31, 2014. (Exhibit 3)

## DISCUSSION

### *Respondent's Non-appearance*

The Respondent did not appear for this hearing. This circumstance is governed by the regulation in 7 C.F.R. §273.16(e)(4), which states in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. *Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence.* If the household member is found to have committed an intentional program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, *the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.*

*Emphasis added*

---

<sup>1</sup> It was not clear from the Work Number print out, whether the dates listed were the dates on which the Respondent was paid, the date for the end of the pay period, or both.

The hearing in this case took place on March 3, 2015. The Respondent was advised of the date, time and location of the hearing, in an Administrative Disqualification Hearing Notice that was sent to her at an address in Amherst, Wisconsin. Mr. Patterson indicated that this was the Respondent's last known mailing address and that the agency did not receive any returned mail. (See Exhibit 3)

The Respondent did not appear at the hearing and the Respondent did not contact the Division of Hearings and Appeals within 10 days to explain her failure to appear. As such, it is found that the Respondent did not have good cause for her non-appearance.

*What is an Intentional Program Violation?*

7 C.F.R. §273.16(c) states that Intentional Program Violations “shall consist of having intentionally: 1) Made a false or misleading statement or misrepresented facts; or 2) Committed an act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization card or any other reusable documents used as part of an automated delivery system (access device).”

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.*

The 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).

*What is OIG's burden of Proof?*

In order for the agency to establish that a FoodShare 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"(a.k.a. "more likely than not") used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases.

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (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.

*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 elements have been shown.

#### *The Merits of OIG's Case*

In the case at hand, the agency asserts that the Respondent violated the rules of the FoodShare Program by lying about her earned income. Specifically, the agency alleges that the Respondent lied in her June 28, 2014 Six Month Report Form (SMRF) when she claimed she had no earned income. The agency alleges that the Petitioner actually had earned income from a cable company.

Looking at the February 2014 application and the June 2014 SMRF completed by the Respondent, it is clear that she did not report any earned income. However, looking at the Work Number printout, it does not appear that the Respondent had earned income in the two weeks prior to her application. As such, it is a little difficult, under a clear and convincing evidence standard, to conclude that she lied when she completed her SMRF.

However, on page 8 of the ACCESS application that the Respondent completed in February 2013, she was advised that she needed to report when her income exceeded 130% of the Federal Poverty Level (FPL), which for the Petitioner's household size of one, was \$1,245.

This reporting requirement comes from FoodShare Wisconsin Handbook (FSH) and the Federal Regulations governing the issuance of food stamps / FoodShare benefits:

**FSH 6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)**

All other food units [i.e., household's which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% (8.1.1) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...

**7 C.F.R. § 273.12(a)(vii):** "...require households with income that are assigned 6-month or longer certification periods to *report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.*" (emphasis added.)

According to the Petitioner's ACCESS application she is not disabled. (See Exhibit 5, pg. 4) As such, the above change reporting provisions did, in fact, apply to her.

In July 2014, the Respondent earned two paychecks. For the week ending July 5, 2014, the Respondent earned a paycheck for \$795.00 and on July 19, 2014, the Respondent earned a paycheck for \$795.54. Thus, as of July 19, 2014, her monthly income totaled \$1590.54. This was over the 130% FPL, \$1245 income limit. As such, the Respondent needed to report that income by August 10, 2014, which would have affected her benefits for September 1, 2014, going forward.

Looking at the Food Stamp Issuance History, it does not appear that the Respondent reported any income, because she continued to receive the maximum FoodShare allotment for a household of one in September 2014 and continued to do so through January 2015, even though her income throughout this time consistently exceeded the \$1245 reporting limit. (See Exhibits 2 and 4) Accordingly, it is found that the Respondent concealed information about her income between August 2014 and January 2015, in order to continue receiving more FoodShare benefits than she would have otherwise received.

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), but 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.

There is no evidence in the record to rebut the presumption that the Respondent intentionally withheld information about her income, in order to receive Foodshare benefits.

**CONCLUSIONS OF LAW**

1. The Respondent violated, and intended to violate, the FoodShare program rules specifying that she needed to accurately report her income when it exceeded 130% of the Federal Poverty Level, pursuant to 7 C.F.R. § 273.12(a)(vii) and 7 C.F.R. §273.16(c).
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

**NOW, THEREFORE,** it is

**ORDERED**

That the agency's determination is sustained, and that the agency 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 16th day of March, 2015.

---

\sMayumi Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

- c: Central Consortium - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- Kyle Patterson - email



**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  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 16, 2015.

Portage County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[pattersonk@co.portage.wi.us](mailto:pattersonk@co.portage.wi.us)