



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

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In the Matter of

Langlade County Department of Social Services, Petitioner

vs.

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

DECISION

Case #: FOF - 163202

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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 Langlade County Department of Social Services to disqualify ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Tuesday, March 3, 2015 at 09:30 AM at Antigo, Wisconsin.

NOTE: On March 3, 2015, Thiago Souza, a worker from Langlade County Human Services left a voice-mail message indicating that the Respondent wanted to waive her right to a hearing. An unsuccessful attempt was made to contact the Respondent by phone at the time of the hearing. On the same date as the hearing, a letter was sent to the Respondent, asking her to either 1) submit a signed waiver of her right to a hearing or 2) submit a letter explaining why she did not make herself available for the hearing. The Respondent was asked to respond by March 13, 2015.

The Respondent did not contact the Division of Hearings and Appeals, by the March 13, 2015 deadline. Accordingly, a decision is being issued based upon the record created on March 3, 2015.

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:

Kyle Patterson, Benefit Recovery Specialist for  
Langlade County Department of Social Services  
1225 Langlade Road  
Antigo, WI 54409-2795

Respondent:

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

ADMINISTRATIVE LAW JUDGE:  
Mayumi Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. The Respondent (CARES # [REDACTED]) is a resident of Langlade County who received FoodShare benefits from April 3, 2013 to December 31, 2013. (Exhibit 7)
2. On February 19, 2013, the Respondent applied for FoodShare benefits, but did not report any earned income. The Respondent signed the application, indicating that the information in the application was correct and complete, and that she understood the penalties for “hiding or giving false information or misusing benefits”. (Exhibits 1 and 2)
3. On August 4, 2013, the Respondent completed a six-month report form (SMRF), indicating that there was no change in her household income, meaning there was no earned income. The Respondent signed the SMRF, indicating that the information was correct and complete. (Exhibit 3)
4. At the time the Respondent completed the February 2013 application for benefits, she had been working at a gas station since December 2012 and was paid bi-monthly. (Exhibit 4)
5. The Petitioner worked regularly and continuously at that gas station through February 2014. (Exhibit 4)
6. On January 22, 2014, Langlade County prepared an Administrative Disqualification Hearing Notice alleging that the Respondent lied in her application and SMRF by claiming she had no earned income. (Exhibit 6)

### **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*

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 Antigo, 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 6)

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 February 2013 application and her August 2013 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 job at a gas station.

Looking at the February 2014 application and the August 2014 SMRF completed by the Respondent, it is clear that she did not report any earned income. However, looking at the Employer Verification of Earnings in Exhibit 5, it is also clear that the Respondent was, in fact, working the entire time and earning a paycheck. The information in Exhibit 5 is reliable as a regularly kept record of the Department of Health Services. It is also reliable as information the employer is legally obligated to retain and report to state and federal authorities. Accordingly, it is found that the Respondent concealed information about her income between February 2013 and December 2013, 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. On the contrary, it is difficult to believe the Respondent somehow forgot she was working, when she completed her application and SMRF.

### CONCLUSIONS OF LAW

1. The Respondent violated, and intended to violate, the FoodShare program rule requiring her to provide accurate information regarding her income, pursuant to 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 Langlade County's determination is sustained, and that it 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.

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\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**

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

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