



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

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In the Matter of

Milwaukee Enrollment Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 164260

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Pursuant to petition filed February 26, 2015, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Milwaukee Enrollment Services to disqualify ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Thursday, May 21, 2015 at 08:30 AM 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:

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

Respondent:

██████████  
██████████  
██████████

**ADMINISTRATIVE LAW JUDGE:**

David Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # ██████████) is a resident of Milwaukee County who received FoodShare benefits in Milwaukee County from July 26, 2012 through August 31, 2014.
2. On March 3, 2015, Petitioner prepared an Administrative Disqualification Hearing Notice alleging that Respondent failed to disclose facts and as a result received more FoodShare benefits than she would otherwise have been entitled to receive had she disclosed those facts.

3. Respondent applied for FoodShare in Wisconsin on July 26, 2012 and reported being homeless.
4. Respondent completed a telephone interview for her FoodShare case on December 5, 2012 and reported being a homeless resident of Wisconsin but used mailing address of on W. Finn in Milwaukee.
5. Respondent completed a telephone interview on May 21, 2013 and again reported being a homeless resident of Wisconsin but used mailing address of on W. Finn in Milwaukee.
6. Respondent completed a telephone interview for her FoodShare case on January 14, 2014 and again reported being a homeless resident of Wisconsin but used mailing address of on W. Finn in Milwaukee.
7. Respondent completed a telephone interview for her FoodShare case on July 25, 2014 and reported being a homeless resident of Wisconsin but used mailing address of on W. Finn in Milwaukee.
8. Respondent was a student at [REDACTED] in Mississippi from August 2012 through the spring of 2013.
9. Respondent obtained employment in Chicago in the summer of 2013 and used a Chicago address for that employment.
10. Respondent used most of the FoodShare issued to her in the states of Mississippi and Arkansas though there was some usage in Illinois and a few transactions in Wisconsin.

## 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 (FSH)*, § 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 (FSH)*, § 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).

In order for a 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 FoodShare 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.

If applying in Wisconsin, a person must reside in Wisconsin. FSH, §3.2.1. The application and renewal form does inform new applicants and recipients renewing their eligibility of that rule. This is not a close case, the evidence here is clear and convincing - Respondent intentionally violated FoodShare program rules by making false and misleading statements about residency, repeatedly. Therefore, Petitioner correctly seeks to disqualify Respondent from the FoodShare program for one year.

### **CONCLUSIONS OF LAW**

1. That Respondent violated, and intended to violate, FoodShare program regulation requiring that a person not make false or misleading statements.
2. That the violation specified in Conclusion of Law No. 1 is the first such violation committed by Respondent.

**NOW, THEREFORE**, it is

**ORDERED**

That Petitioner’s determination is sustained, and that Petitioner may make a finding that Respondent committed a first IPV of the FoodShare program and disqualify Respondent from the program for one year, effective the first month following the date of receipt of this decision.

**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 12th day of June, 2015

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\sDavid Fleming  
Administrative Law Judge  
Division of Hearings and Appeals

- c: Miles - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- Pamela Hazley - email



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

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The preceding decision was sent to the following parties on June 12, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
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