



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

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In the Matter of

Office of the Inspector General, Petitioner

vs.

*Redact*

, Respondent

DECISION

Case #: FOF - 165765

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Pursuant to petition filed April 30, 2015, 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 *Redact* from receiving FoodShare benefits (FS) one year, a hearing was held on Monday, June 15, 2015 at 01:30 PM at Eau Claire, 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:

*Redact* (did not appear)

*Redact*

**ADMINISTRATIVE LAW JUDGE:**

Michael O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # *Redact*) is a resident of Illinois who received FoodShare benefits through Wisconsin from November 28, 2011 through October 31, 2014.
2. On May 7, 2015, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent never lived in Wisconsin while receiving FoodShare benefits here.

3. The respondent failed to appear for the scheduled June 15, 2015 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.
4. The respondent lived solely in Illinois from November 28, 2011 through October 31, 2014. During this period he told his Wisconsin worker that he lived in this state.

### DISCUSSION

FoodShare recipients commit an intentional program violation if they intentionally make a false or misleading statement or if they misrepresent, conceal, or withhold facts. If the Department proves by clear and convincing evidence that they intentionally violated the program's rules, they lose their eligibility; the penalty for the first violation is one year. 7 CFR §§ 273.16(e)(6) and (b)(1)(i). The Department seeks to disqualify the respondent for one year because it contends that he reported that he lived in Wisconsin when he actually lived solely in Illinois. This allowed him to receive \$4,042 in benefits through Wisconsin from November 28, 2011, through October 31, 2014, without having any ties to this state.

Recipients must live in the state in which they apply for FoodShare. States cannot impose durational requirements or require a household to live in a permanent dwelling, have a fixed address, or intend to remain in the state. 7 CFR § 273.3(a). A person cannot be considered a resident of a state he is in solely for vacation. Nor can he receive benefits from two different places in the same month. *Id.*

Wisconsin policy requires that “[a]pplicants for FoodShare must reside in, or be temporarily absent from Wisconsin” and gives the following guidelines for determining residency:

1. Residence does not mean the legal place of residence or principal home.
2. Residence does not mean the intent to live permanently in Wisconsin or the county.
3. A person who is in Wisconsin or in a county solely for vacation purposes is not a resident of the county.
4. Do not require someone to reside in Wisconsin or within a county for any minimum length of time.
5. Residence does not mean a permanent dwelling or a fixed mailing address.

*FoodShare Wisconsin Handbook*, § 3.2.1.

Thus, although the FoodShare program's residency requirements are not strict, a recipient must maintain more than trivial ties to the state. Although FoodShare is a national program, meeting a residency requirement is important because without them a person could apply in one state, be rejected, and then apply in another, hoping the next state will not catch the reason he was found ineligible in the previous statement.

Clear and convincing is a middle level of proof that requires the Department to show that more than just a preponderance of the evidence supports its position but does not require it to eliminate all reasonable doubt, as it would have to in a criminal case:

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 v. Kuehn*, 11 Wis.2d 15, 26 (1959)*Kuehn*, 11 Wis.2d at 26.



## 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 Madison,  
Wisconsin, this 30th day of June, 2015

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\sMichael O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals

- c: Office of the Inspector General - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- Redact - email



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 30, 2015.

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

*Redact* @wisconsin.gov