



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

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In the Matter of

Office of the Inspector General

vs.

██████████, Respondent

DECISION

Case #: FOF - 165770

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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 ██████████ from receiving FoodShare benefits (FS) for one year, a hearing was held on Thursday, June 18, 2015 at 09:30 AM, by telephone.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV) between January 1, 2013 and August 31, 2013.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

By: Megan Ryan, PARIS Agent

Office of the Inspector General  
Department of Health Services  
PO Box 309  
Madison, WI 53701

Respondent:

██████████  
██████████  
██████████

**ADMINISTRATIVE LAW JUDGE:**

Mayumi Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The Respondent (CARES # ██████████) received FoodShare benefits for her child, ██████████ (Exhibits 6 and 7)

2. On September 27, 2011, an Iowa District Court Judge ordered [REDACTED] to be placed in the custody and guardianship of her grandmother, [REDACTED]. The court also ordered the Respondent to make arrangements for state and Federal assistance to be received by [REDACTED]. (Exhibit 11)
3. On January 10, 2012, an Iowa Juvenile Court issued an amended order, placing “jurisdiction” over the child’s guardianship to the probate court and appointing [REDACTED] as guardian. The court ordered the probate clerk to issue letters of appointment for guardianship, upon filing by the guardian an “oath of office and identification”. The court further ordered review of the matter in January 2013, and every year thereafter. (Exhibit 11)
4. On December 2, 2012, the Respondent completed an on-line ACCESS application, indicating that [REDACTED], who was then two years old, was part of her household. The application contained a FoodShare Penalty Warning that indicated the Respondent could be disqualified from the FoodShare program, if she provided false information. The Respondent signed the application, indicating the information was correct and complete and that she understood the penalties for providing false information or breaking the rules. (Exhibit 3)
5. On March 26, 2013, the Respondent completed another on-line ACCESS application, indicating that [REDACTED] was part of her household. The application contained a FoodShare Penalty Warning that indicated the Respondent could be disqualified from the FoodShare program, if she provided false information. The Respondent signed the application, indicating the information was correct and complete and that she understood the penalties for providing false information or breaking the rules. (Exhibit 4)
6. On September 13, 2013, the Respondent completed another on-line ACCESS application, indicating [REDACTED] was part of her household. The application contained a FoodShare Penalty Warning that indicated the Respondent could be disqualified from the FoodShare program, if she provided false information. The Respondent signed the application, indicating the information was correct and complete and that she understood the penalties for providing false information or breaking the rules. (Exhibit 5)
7. [REDACTED] received benefits in Wisconsin from January 2013 through August 2013 on the Respondent’s case. (Exhibits 6 and 7)
8. On May 11, 2015, OIG prepared an Administrative Disqualification Hearing Notice alleging that the Respondent lied about her household composition, specifically about her daughter, [REDACTED], in order to receive more FoodShare benefits than she was otherwise entitled to receive, between January 1, 2013 and August 31, 2013. (Exhibit 1)

## 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 June 18, 2015. The Respondent was advised of the date and time of the hearing, in an Administrative Disqualification Hearing Notice that was sent to her at an address in Meridian, Mississippi. Ms. Ryan indicated that this was the Respondent's last known address; that she had spoken to the Respondent who confirmed that the address was correct and that OIG did not receive any returned mail.

The June 18, 2015 notice directed the Respondent to contact me, at least two days prior to the hearing, to provide a phone number where she could be reached for the hearing. The Respondent did not call me with a phone number.

Two attempts were made to contact the Respondent at a phone number provided by Ms. Ryan, but both times the outgoing message stated that, "the number or code you have dialed is incorrect..."

Based upon all of the foregoing, the decision was made to proceed in the Respondent's absence. 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 OIG 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 Office of the Inspector General (OIG) asserts that the Respondent violated the rules of the FoodShare Program by lying about her household composition. Specifically, OIG asserts that the Respondent

provided false information between January 1, 2013 and August 31, 2013, by claiming that her daughter, [REDACTED], was in the household. It is OIG's belief that [REDACTED] was in Iowa with her grandmother, [REDACTED].

The ACCESS applications that were electronically signed by the Respondent on December 2, 2012, and on March 26, 2013, clearly establish that the Respondent made representations to the State of Wisconsin that [REDACTED] was living with her, here in Wisconsin, during the period of the alleged violation, January through August 2013. The case number on the Case Comments and the case number in the Individual Eligibility History for [REDACTED], show that [REDACTED] received FoodShare benefits on the Respondent's case from January 2013 through August 2013.

OIG provided no affirmative evidence of the child's Iowa residency, such as daycare records, school records, medical records or a lease naming the child as an occupant. In order to prove that [REDACTED] was in Iowa and not in Wisconsin between January 1, 2013 and August 31, 2013, OIG relied upon a court order issued in 2012 appointing [REDACTED] as guardian of [REDACTED] (See Exhibit 11). However, that court order was amended in 2012 and conditioned the guardianship upon a filing of an oath of office and identification. (Id.) OIG did not obtain the letters of guardianship and as such, there is no evidence that they were ever issued to [REDACTED]. Further, the 2012 court order was subject to review in 2013. (See Exhibit 11) OIG did not provide a copy of any court records from 2013. As such, if the letters of guardianship were actually issued, there is no way to know if the guardianship continued in 2013. Consequently, Exhibit 11 does not prove [REDACTED] was living in Iowa between January 2013 and August 2013.

OIG also relied upon documentation from Iowa showing that [REDACTED] received benefits for [REDACTED]. Exhibit 12 purports to be a record of food stamp issuance from Iowa to [REDACTED] and is entitled: Iowa Issuance Verification System...Food Stamps and Warrants Issued. There is a hand written note on the document, indicating that a certain alphanumeric code refers to [REDACTED]. While the print off itself might be reliable as a regularly kept business record of the State of Iowa, the handwritten note is not such a record and constitutes a separate hearsay statement.

There is nothing about that hearsay statement that makes it inherently reliable or trustworthy. Indeed, the hearsay declarant is unknown so there is no way to assess the person's credibility. In addition, it is not known how the author knows what the coding means or whether they even got it right. As such, there is no reliable evidence that Exhibit 12 is even [REDACTED]'s record.

Even if the handwritten note could be considered reliable, the records only show the receipt of Iowa food stamps from May 2011 through December 2012. As such, it would not prove the child received food stamps in Iowa from January 2013 through August 2013, the alleged period of violation, and it does not support the conclusion the child was living in Iowa during that time.

Exhibit 13 contains two Notices of Decision from the Iowa Department of Human Services. The first one is dated October 5, 2011 and indicates that the amount of Food Assistance [REDACTED] would be receiving would change effective November 1, 2011. The notice lists [REDACTED] as part of [REDACTED]'s household. The second one is dated March 14, 2012, and indicates that [REDACTED]'s application for Food Assistance was approved through September 30, 2012. This notice also lists [REDACTED] as part of [REDACTED]'s household. These records are, again, outside the January 2013 through August 2013 time frame and as such, do not prove [REDACTED] was in Iowa during the period of the alleged program violation.

It should be noted that receipt of food stamp benefits is not necessarily conclusive evidence of a person's residence. OIG and various county agencies have brought forth a number of cases alleging that a person received benefits in Wisconsin, but was not actually living here. Indeed, it is entirely possible that [REDACTED] lied to Iowa authorities and received benefits for [REDACTED] in error. Without affirmative evidence of the child's residence, there is no way to know.

Exhibit 18 is a set of Case Comments and the entry for March 20, 2015 indicates that the Respondent reported to OIG that, "[REDACTED] was living with her in WI and then in May of 2013 she moved to MS anyways." The Respondent did not make any other admissions or denials that are documented.

There is no evidence and no assertion that the Respondent's household was comprised of elderly, blind or disabled individuals. (See Exhibits 3, 4 and 5) As such, the Respondent was not required to report the change in household composition before her next six-month review:

#### **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.

...  
FSH, §6.1.1.2.

This follows Federal law which directs that States may:

“...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.*”  
7 C.F.R. § 273.12(a)(vii); (emphasis added.)

Given that the Respondent applied for benefits in March 2013 and was approved for benefits beginning April 1, 2013 through August 31, 2013, it is reasonable to conclude that her six month review would not be due until September 30, 2013, the six month. (See Exhibit 7)As such, the Respondent was not required to report the change in household composition until her six-month review in September 2013, so no IPV occurred before that time.

Based upon the foregoing, it is found that OIG has not met its burden to prove, by clear and convincing evidence, that the Respondent lied in her December 2012 and March 2013 applications when she reported [REDACTED] in her home. It is also found that the Respondent's failure to report [REDACTED]'s move to Mississippi in May 2013, does not constitute an IPV before September 2013, because she was not required to report a change in household composition before that time. As such, this IPV must be reversed.

It should be noted that the Respondent should have reported [REDACTED] out of the home when she completed her application in September 2013, but she instead continued to report [REDACTED] in her household. (See Exhibit 5) There is no indication in the record that the Respondent received FoodShare benefits for [REDACTED] based upon that application, but if she did, then she very likely committed an intentional program violation by lying about her household composition. However, OIG did not provide evidence showing [REDACTED] received benefits after August 31, 2013 and even if she had, I could not sustain the IPV in this action, because the current Administrative Disqualification Hearing Notice placed the period of the alleged IPV between January 1, 2013 and August 31, 2013.

#### **CONCLUSIONS OF LAW**

OIG has not met its burden to prove, by clear and convincing evidence, that the Respondent intentionally violated the rules of the FoodShare / food stamp program between January 1, 2013 and August 31, 2013.

**NOW, THEREFORE, it is ORDERED**

That IPV case number [REDACTED] is hereby reversed.

**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 29th day of June, 2015.

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\sMayumi Ishii  
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
- Megan Ryan - email



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

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The preceding decision was sent to the following parties on June 29, 2015.

Office of the Inspector General  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[megan.ryan@wisconsin.gov](mailto:megan.ryan@wisconsin.gov)