



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/166829

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General in regard to FoodShare benefits (FS), a telephone hearing was held on July 23, 2015.

The issue for determination is whether the Department erred in its imposition of an Intentional Program Violation disqualification on petitioner effective June 1, 2015.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [Redacted]

Office of the Inspector General
Department of Health Services
1 West Wilson Street
Madison, WI 53701

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Brown County.

2. The Brown County Sheriff investigated petitioner for allegedly using her FS benefits to pay “tabs” that she had accumulated at [REDACTED] and [REDACTED]; in effect, petitioner was possibly paying for food at some point in time after it was purchased, or was otherwise applying her FS benefits to pay unknown debts at these stores.
3. On March 4, 2015, the Brown County Sheriff’s office sent petitioner a summons to appear in court regarding Citation [REDACTED]. Respondent’s Exhibit 1. The violation description was cited as “Fraud in Public Assistance.” *Id.*
4. A bench trial was held on April 29, 2015, and petitioner was found guilty of an ordinance violation under section 30.05(2) of the Brown County Code. Respondent’s Exhibit 3. Petitioner did not appear, but was represented by counsel at the bench trial. See, Respondent’s Exhibit 2.
5. On May 13, 2015, the respondent sent notice to petitioner informing her that because of the finding of guilt in the circuit court it would impose an IPV and a 12 month sanction.
6. Petitioner appealed the FoodShare Notice of Disqualification on June 23, 2015.

DISCUSSION

The process of imposing an IPV is detailed in the Code of Federal Regulations at 7 CFR 273.16. The Federal regulations provide for an imposition of an IPV through several mechanisms. An agency may initiate an administrative disqualification hearing (see 7 CFR 273.16(e)); or by waiver (see 7 CFR 273.16(f)). But, an IPV may also be based on a civil or criminal court action establishing the facts supporting the IPV in a court of appropriate jurisdiction. See 7 CFR 273.16(g). The Federal rule states “[t]he State agency should conduct administrative disqualification hearings in cases in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system....” 7 CFR 273.16(a).

In this case, the FS agency and the prosecuting authority proceeded with a prosecution of this matter as a civil forfeiture matter as a violation of Wisconsin Statute § 30.05(2). Petitioner did not personally appear at the bench trial, but was represented by counsel who appeared on her behalf. The court found petitioner guilty of violating section 30.05(7) of the Brown County Code, which charge was subsequently amended to cite section 30.05(2) of the Brown County Code, entitled Prohibiting Fraud in Public Assistance, Housing Accommodations, and Energy Assistance Cases.

The Federal rule also allows for the agency’s imposition of an IPV after a finding of guilt by a court:

(7) If a court fails to impose a disqualification or a disqualification period for any intentional program violation, the State agency shall impose the appropriate disqualification penalty specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section unless it is contrary to the court order.

7 CFR 273.16(a)(7), see also § 273.16(g)(2).

Petitioner’s representative argued at hearing that the ordinance under which petitioner was convicted is too vague and does not specify any of the grounds establishing that the petitioner committed an IPV. The petitioner also referenced citations to recent decisions issued by the Division of Hearings and Appeals that have remanded IPV determinations that were based on ordinance violation convictions. See, DHA decisions FOO/165625 (June, 2015), FOP/165615 (June, 2015), and FOO/165296 (June, 2015).

I note, however, that the decisions in all three of those cases involved petitioners who were found guilty by default, i.e., they did not appear for their respective trials. That is not the case here, where petitioner was represented by counsel who did, in fact, appear at the scheduled bench trial. The Brown County Circuit Court determined, in a written order dated June 4, 2015, that the petitioner was found guilty of violating

section 30.05(2) of the Brown County Code. As such, the Circuit Court determined that the petitioner willfully acted to interfere with the proper administration of the public assistance program. Again, this determination was reached after a bench trial where petitioner appeared by counsel.

The petitioner also argued that a conviction under section 30.05(2) of the Brown County Code does not equate to an IPV. An IPV is defined as follows:

Definition of intentional Program violation. Intentional Program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any 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 cards or reusable documents used as part of an automated benefit delivery system (access device).

7 C.F.R. 273.16(c).

The record establishes petitioner's conviction for willfully acting to interfere with the proper administration of the public assistance program. The respondent has provided further testimony and documentation establishing that the conviction pertained to the FS public assistance program. The petitioner has not countered that her conviction *did not* pertain to the FS program, and simply pointing out the brevity of the Circuit Court's June 4, 2015, Order is not sufficient to rebut the testimony and documentation provided by the respondent indicating that the conviction *did* pertain to the FS program. Based upon the record before me, the agency may impose the IPV and sanction petitioner as it has done.

I note that the petitioner also appealed the respondent's determination of two FS overpayment claims related to this IPV. Due to the dismissal of petitioner's appeal here, I will have petitioner's FS overpayment matter (DHA case no. 166830) scheduled for a full hearing; written notice will be provided to the parties of the date and time for that hearing.

CONCLUSIONS OF LAW

The Department did not err in termination petitioner's FS as the IPV has been established in the circuit court.

THEREFORE, it is

ORDERED

That this matter is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

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, Wisconsin 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 (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 10th day of August, 2015.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 10, 2015.

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