



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Milwaukee County Department of Human Services, Petitioner

vs.

DECISION

██████████, Respondent

Case #: FOF - 167930

Pursuant to petition filed August 7, 2015, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Milwaukee County Department of Human Services to disqualify the respondent, ██████████, from receiving FoodShare benefits (FS) for a period of one year, a telephone hearing was held on Monday, September 21, 2015 at 1:00 P.M., 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 for the petitioner:

PARTIES IN INTEREST:

Petitioner:

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

By: ██████████
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, Wisconsin 53205

The Respondent did not appear; his address is as follows:

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Kenneth Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Milwaukee County who received FS benefits in Milwaukee County from April 19, 2012 through November 15, 2012.
2. Due to the respondent's enrollment in the FS program, the respondent was issued a QUEST card which the respondent utilized to access his monthly FS allotment provided to respondent. QUEST cards are electronic benefit transfer cards that replaced food stamp coupon booklets.
3. On or about April 19, 2012; May 14, 2012; August 14, 2012; October 16, 2012; and November 15, 2012; the respondent's QUEST card was utilized in transactions involving [REDACTED] [REDACTED] [REDACTED] [REDACTED], in the amounts, respectively of \$100, \$200, \$200, \$100, and \$200.
4. [REDACTED] was a licensed vendor of the United States Department of Agriculture Food and Nutrition Service, which enabled it to redeem QUEST cards.
5. [REDACTED] was classified as a mobile vendor and operated out of private vehicles. Between August, 2010 and January, 2013, [REDACTED] redeemed approximately \$778,000 in QUEST benefits from food stamp benefit recipients who were not purchasing food, but instead receiving cash for providing access to their QUEST benefits.
6. On or about February 15, 2013, [REDACTED], doing business as [REDACTED], pled guilty to a charge of unlawfully purchasing and redeeming FS benefits. [REDACTED] admitted that no food or groceries were ever provided by [REDACTED] and/or [REDACTED] in exchange for Quest benefits.
7. On August 17, 2015, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent intentionally transferred FS benefits to [REDACTED], in the total amount of \$800, in exchange for cash payment(s). This Notice was mailed to the petitioner's last-known address on file with the agency on that date, which was a Post Office Box. See, Exhibit #14.
8. On August 31, 2015, it was reported to the agency that the petitioner was incarcerated in the [REDACTED] [REDACTED]; that agency took no action to amend the Administrative Disqualification Hearing Notice and forward the Notice or try to serve the Notice on the petitioner at that jail. Since the Notice had been mailed to a P.O. Box and the petitioner was in jail, it was highly probable that he would not be able to access the P.O. Box contents while in jail.
9. The respondent did not appear for the scheduled September 21, 2015, Intentional Program Violation (IPV) hearing at the Milwaukee agency.

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, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

Wisconsin statutes prohibit the intentional exchange of FS benefits for cash. The law specifically provides that to traffic food stamp program benefits means to do any of the following:

Buy, sell, steal, or otherwise accomplish the exchange of, directly, indirectly, in collusion with others, or individually, food stamp program benefits issued and accessed through the electronic benefit transfer program under s. [49.797](#), or by manual voucher and signature, for cash or other consideration that is not food.

Wis. Stat. §946.92(1)(dm); *see also*, 7 C.F.R. § 271.5(b).

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*, § 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).

7 C.F.R. §273.16(e)(4) provides that the hearing shall proceed if the respondent cannot be located or fails to appear without good cause. The respondent did not appear or claim a good cause reason for not attending the hearing. Nonetheless, FS program policy, and the longstanding policy of the Division of Hearings & Appeals, Work and Family Services Unit, has required a showing that notice was sent to correct last known address of the recipient and did not return to the agency. The Department's own written policy states:

The individual must be notified in writing once it is determined that s/he is to be disqualified. Begin the disqualification period no later than the second month following the date the individual receives written notice of the disqualification. The disqualification period must continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household.

FoodShare Wisconsin Handbook § 3.14.1.1.

Here, the agency representative testified that the Notice was sent to the last known address of record on August 17, 2015, a post office box, but he conceded that Case Comments online for the petitioner's case indicated that contact was made with the agency on or about August 31, 2015, indicating that the petitioner was incarcerated at the [REDACTED] [REDACTED] admitted that no further attempt was made to notify the petitioner at the jail of the pending September 21, 2015, scheduled Administrative Disqualification Hearing. He also testified that the August 17, 2015, notice did not return to the agency as undelivered.

The one year disqualification penalty is a severe hardship to a FS recipient household of limited means. The agency must go the extra mile to ensure delivery of a notice of such and Administrative Disqualification Hearing to a FS participant when the agency is notified that the FS participant is living at a new address. This includes a specified county jail. The FS policy states that the individual "must" be notified. Merely sending a notice to a postal box where the recipient had been receiving mail, when the agency comes to know that the recipient is in a county jail during the 30 day notice period, is not diligent enough action by the Department to notify the respondent recipient. The agency must act to notify the respondent of the hearing date and time by notice to the newly discovered address; or by amended notice.

For this procedural reason, and no other, I reverse the intentional program violation sought here. Nothing in this decision prevents the agency from re-filing with a new Administrative Disqualification Hearing Notice and action.

CONCLUSIONS OF LAW

That the agency has not demonstrated that the petitioner was notified of the administrative disqualification hearing because it learned three weeks prior to the hearing that the petitioner was in the [REDACTED] and not living at his residence address but took no action to resend the Notice of the Hearing to the jail.

NOW, THEREFORE, it is ORDERED

That the petitioner's determination is reversed, and that the petitioner shall not disqualify the respondent from the FS program based upon this August 17, 2015, Administrative Disqualification Hearing Notice, because he was not notified of the ADH.

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 Madison,
Wisconsin, this 23rd day of September, 2015

\sKenneth Duren
Administrative Law Judge
Division of Hearings and Appeals

- c: Miles - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- [REDACTED] - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 23, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Pamela.Hazley@dhs.wisconsin.gov