



FH

[REDACTED]

STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO- 173991

PRELIMINARY RECITALS

On May 2, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03, to challenge a decision by the Brown County Human Services regarding FoodShare benefits (FS). The hearing was held on June 14, 2016, telephonically. The record was held open for 10 days to allow petitioner and the respondent to address previous DHA decisions on this issue. Petitioner submitted a position statement timely; the respondent’s submission was received 13 days post-hearing, and 6 days after petitioner’s response.

The issue for determination is whether the respondent correctly determined an intentional program violation was committed by the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent's Representative:

Attorney [REDACTED]  
Legal Action of Wisconsin  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED]  
Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Peter McCombs  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. On July 22, 2015, the Brown County Sheriff mailed to petitioner a citation for violating Brown County ordinance 30.05, fraud in public assistance.
3. Petitioner did not appear at the scheduled hearing, and was found guilty by default on a no contest plea of violating ordinance no. 30.05(7).
4. On February 1, 2016, a FoodShare IPV was imposed on petitioner based upon the default judgment.

## DISCUSSION

7 C.F.R. §273.16(b) provides as follows:

(1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first intentional Program violation....

Similarly, the Department's FS Handbook, §3.14.1, provides:

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.

The definition of an IPV is found at 7 C.F.R. §273.16(c):

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).

If the agency files an ADH, the person must be notified at least 30 days before the hearing and have the opportunity to defend the charge. 7 C.F.R. §273.16(e)(3). The agency must prove the IPV by clear and convincing evidence. 7 C.F.R. §273.16(e)(6). If the person fails to appear for the ADH, the agency still must present its evidence to the administrative law judge, and the judge must determine if the IPV was committed based on clear and convincing evidence. 7 C.F.R. §273.16(e)(4).

The issue in this case is whether the finding of guilty of an ordinance violation on a default, no contest verdict is sufficient to warrant disqualification from the FS program. I conclude that it does not.

I first note that the ordinance on its face does not provide specifically that the person committed an act for the “purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons.”

A second problem is that the agency did not show to the tribunal, by clear and convincing evidence, that the petitioner committed an IPV. Because petitioner did not appear at the ordinance citation hearing, she was found guilty with no additional proceeding. It contradicts the requirements of the 7 C.F.R. §273.16 that a person can be disqualified from the FS program with no showing by clear and convincing evidence (or a higher level of proof) that an IPV occurred. If a recipient fails to appear for an administrative disqualification hearing (ADH), the agency still must convince an administrative law judge that an IPV occurred. It makes no sense that the burden would be so high on an administrative tribunal with experience in handling ADHs, but that no such burden would be required before a local court that likely has little or no working knowledge of FS IPV procedures.

Finally, by virtue of her non-appearance in the ordinance case, the court entered a plea of no contest on petitioner’s behalf. Wis. Stat., §904.10 provides that a plea of no contest is not admissible in any civil or criminal proceeding against the person who made the plea. The OIG thus cannot utilize the no contest plea as a basis for moving against petitioner in an IPV action.

This decision does not prevent the OIG from moving forward with an IPV action against petitioner.

### **CONCLUSIONS OF LAW**

A default judgment finding petitioner guilty of violating a Brown County welfare fraud ordinance is insufficient to impose an IPV sanction because (1) the ordinance does not refer to FS trafficking, (2) there was no showing by clear and convincing evidence to the Brown County court that petitioner committed an IPV before the court imposed the guilty verdict, and (3) a no contest plea is not admissible as a basis for a later proceeding against the person.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the OIG with instructions to rescind the one-year IPV sanction against petitioner, no later than July 1, 2016.

### **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, **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 28th day of June, 2016

\s \_\_\_\_\_  
Peter 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 June 28, 2016.

Brown County Human Services  
Division of Health Care Access and Accountability  
Attorney [REDACTED] [REDACTED]