



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

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In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████ Respondent

DECISION

Case #: FOF - 175701

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Pursuant to petition filed July 21, 2016, 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 a period of one year, a hearing was held on Monday, September 19, 2016 at 11:45 AM at ██████████, 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:

██████████  
██████████  
██████████

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # ██████████) is a resident of Milwaukee County who received FS benefits in Milwaukee County in 2013 and 2014.
2. The respondent was an ongoing FoodShare recipient who renewed her benefits through Milwaukee County on April 29, 2014.
3. The respondent lived in Washington State on April 29, 2014.

4. On August 2, 2016, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that applied for and received FoodShare through Wisconsin while living in another state.
5. The respondent failed to appear for the scheduled September 19, 2016 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

### **DISCUSSION**

FoodShare recipients lose their eligibility if the department proves by clear and convincing evidence that they intentionally violated the program's rules; 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 she lived in the state of Washington when she renewed her benefits in Wisconsin.

FoodShare residency requirements are not strict. 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. But federal regulations state that a "household shall live in the State in which it files an application for participation." 7 CFR § 273.3(a). The department introduced evidence that when the petitioner lived in and used her FoodShare benefits solely in Washington when she renewed her FoodShare benefits in Wisconsin in April 2014. She did not appear at the hearing and testify, so the only evidence I have is the department's.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

### **CONCLUSIONS OF LAW**

1. The respondent violated, and intended to violate, the FS program rule specifying that a Foodshare recipient live in the state in which she applies for FoodShare.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

**NOW, THEREFORE,** it is

**ORDERED**

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

### **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 30th day of September, 2016

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\sMichael D. 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
- ██████████ - email



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

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The preceding decision was sent to the following parties on September 30, 2016.

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

