



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Eau Claire County Department of Human Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 220419

PRELIMINARY RECITALS

Pursuant to petition filed October 16, 2025, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Eau Claire County Department of Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of two years, a hearing was held on Tuesday, November 25, 2025 at 10:00 AM via telephone.

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:

Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

Respondent:

██████████
██████████
████████████████████
██████████
████████████████

ADMINISTRATIVE LAW JUDGE:

Kate J. Schilling
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Eau Claire County who received FS benefits in Eau Claire County on and off until March 31, 2025. He received FoodShare benefits as a household of one person.
2. On July 25, 2019, the respondent signed a Waiver of Administrative Disqualification Hearing form acknowledging that he committed a FoodShare intentional program violation (IPV) by allowing another person to use his FoodShare card while he was incarcerated. He was sanctioned from receiving FoodShare benefits from 09/1/19 through 08/31/20. (Agency Exhibit 7)
3. The respondent became incarcerated on October 7, 2025. (Agency Exhibit 6)
4. On October 7, 2025, a female purchased food at the local gas station using the respondent's FoodShare card. The woman used a store loyalty card which provided her name.
5. Two additional purchases were made at grocery stores with the respondent's FoodShare card on October 9 and 10. A total of \$256.83 was spent between October 7 and October 13, 2025. (Agency Exhibit 2)
6. On October 13, 2025, the agency noticed that the respondent's FoodShare card was being used in the community while he was incarcerated. The FoodShare card was cancelled due to fraudulent usage.
7. On October 15, 2025, the agency investigator met with the respondent to discuss the usage on his FoodShare card. The respondent did not recognize the woman in the picture using his FS card at the gas station; however, he did recognize her name as being his aunt's niece. He stated that he had given his FS card to his aunt to use while he was incarcerated. (Agency Exhibit 5)
8. On October 22, 2025, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent allowed a person outside of his assistance group to use his FS card.

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).

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. 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).

In order for the petitioner to establish that an FS 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 a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (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. ...

Kuehn, 11 Wis.2d at 26.

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., 4th 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 be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

The agency contends that the respondent allowed a person outside of his FoodShare assistance group to use his FoodShare card while he was incarcerated. The respondent admitted to the agency investigator that he had given his aunt permission to use his FoodShare card. Although he did not recognize the woman in the pictures using his card, he recognized her name as being his aunt’s niece, and stated that she had likely received the card from his aunt.

On October 15, 2025, the respondent signed a statement indicating that he had given his FoodShare card to his aunt and had given her permission to use it. He acknowledged that his aunt had likely given the card to her niece, and that he knew that he should not have allowed another person to use the card.

At the hearing, the respondent testified that he did not think the facts in this case were the same as his first intentional program violation in 2019. In the previous case, the respondent allowed a third party outside of his assistance group to use his FoodShare card while he was incarcerated. In the present case, the respondent also allowed a third party outside of his assistance group to use his FS card. He argued that the difference is that in the present case, the respondent no longer had an open or active case for FoodShare as his benefits had closed in March 2025. He believed that the remaining funds left on the FS card were his to decide what to do with; therefore, he argued that his intent was different in the current situation compared to 2019.

The respondent's argument ignores the fact that the FoodShare rules are not different for people receiving active FoodShare benefits versus people who are using previously allocated benefits. It is a violation of state and federal FoodShare policy to use another person's FoodShare card or allow a third party to use a FoodShare card if they are not part of the assistance group. The *FS Handbook* also states that benefits also cannot be transferred to any other food group:

FoodShare allotments belong to the assistance group to which they were issued. Benefits cannot be transferred to other cases or EBT accounts.

FS Handbook § 7.1.1. See also 7 C.F.R. § 274.7(a) Here, the respondent was approved for FS benefits as an assistance group of one person. That means that he is the only one who can use his FS card and he cannot use anyone else's card. If there has been no activity on a FoodShare card for 274 days, any outstanding balance on the card will be expunged and returned to the program. *FS Handbook* § 7.1.1.10.

Moreover, the facts in this case are directly on point with the first example in the *Overpayments, Fraud, and Intentional Program Violations* publication that is sent out to all FoodShare recipients.

Some examples of fraud or an intentional program violation are below:

1. Mark is the only person in his family getting FoodShare benefits. Mark finds out he is going to jail for the month, so he gives his QUEST card to his friend, Sally, to do her grocery shopping while he is in jail.

(Agency Exhibit 9) Finally, the facts in this case are notably similar to the facts surrounding the respondent's first FoodShare intentional program violation (IPV) back in July 2019. That means he was aware of the rule which prohibits sharing FoodShare cards with other people. While the respondent may not have given his card directly to his aunt's niece, he did give his card to his aunt and gave her permission to use it. Therefore, his actions resulted in a third party using his card in violation of the FoodShare rules.

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 second such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for two years.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FoodShare program rules by transferring, selling, or trafficking FS benefits in violation of 7 CFR § 273.16 (c)(2).
2. The violation specified in Conclusion of Law No. 1 is the second 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 second IPV of the FoodShare program and disqualify the respondent from the program for two years, effective the first month following the date of receipt of this decision.

APPEAL TO COURT

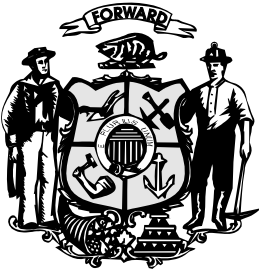
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 201 E. Washington Ave., Madison, WI 53703, **and** on those identified in 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 11th day of February, 2026

\sKate J. Schilling
Administrative Law Judge
Division of Hearings and Appeals

- c: Great Rivers Consortium - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- Aaron Borreson - email



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The preceding decision was sent to the following parties on February 11, 2026.

Eau Claire County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability

