



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

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In the Matter of

Marinette County Health & Human Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 220513

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**PRELIMINARY RECITALS**

Pursuant to petition filed October 20, 2025, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Marinette County Health & Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of two years, a hearing was held on Thursday, December 11, 2025 at 9:30 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:

Marinette County Health & Human Services  
Entrance B  
1925 Ella Court  
Marinette, WI 54143

Respondent:

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

**ADMINISTRATIVE LAW JUDGE:**

Kate J. Schilling  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Marinette County who received FoodShare benefits on and off between September 2018 and September 2025.
2. On February 15, 2019, the respondent received a first FoodShare intentional program violation sanction due to inaccurately reporting information on an application. He received a one year sanction from FoodShare benefits from 4/1/19 through 3/31/20. (Agency Exhibit 10)
3. On October 31, 2024, the respondent applied for FoodShare benefits via ACCESS using his brother's name and personal information. He completed the telephonic interview on the same day. Expedited FoodShare benefits were approved in the amount of \$292 per month.
4. On November 11, 2024, the agency received an alert that the respondent's brother had applied for FS benefits despite being incarcerated continuously without work release since May 30, 2023.
5. On November 15, 2024, the respondent called from his telephone number to set the PIN for his brother's FoodShare card.
6. On November 20, 2024, the respondent used the FoodShare card issued in his brother's name and purchased two beverages from a local store for \$3.50.
7. The agency investigator determined that the telephone call for the FoodShare interview was made from the respondent's telephone number. Additionally, four balance inquiries regarding the brother's FoodShare card balance were made from the respondent's phone number between November 15-22, 2024. (Agency Exhibits 5 and 9)
8. On October 10, 2025, the agency investigator met with the respondent regarding the allegation of fraud with a FoodShare card. The respondent admitted to the agency investigator that he had applied for FS benefits in his brother's name and made a \$3.50 purchase using his brother's FoodShare card.
9. On October 22, 2025, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent misrepresented information to obtain FS benefits.

## 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., 4<sup>th</sup> 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 used his brother’s personal information to apply for FoodShare benefits in his brother’s name and made a purchase using his brother’s FoodShare card. The agency discovered the issue after receiving an alert that the respondent’s brother was incarcerated without work release. Additionally, the agency was able to trace the phone calls for the FoodShare interview, resetting the card PIN, and four balance inquiries back to the respondent’s phone number.

At the hearing, the respondent admitted that he had used his brother's personal information to apply for FoodShare benefits in his brother's name. He informed the agency investigator that his brother had no knowledge of what occurred and was not involved in any way. (Agency Exhibit 12) The respondent stated that he was not in the right mindset at that time. He apologized for his actions and agreed to repay the \$3.50 he used from his brother's FoodShare card.

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 intentionally misrepresented information and concealed facts in violation of Wis. Stat. §946.92 (2)(a) and committed an intentional program violation as defined in 7 C.F.R. § 273.16(c)(1).
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).

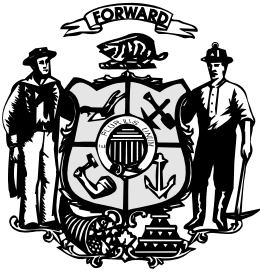
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison, Wisconsin,  
this 11th day of February, 2026

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

- c: Bay Lake Consortium - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- John Rose - email



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

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

Marinette County Health & Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability

