



STATE OF WISCONSIN

Division of Hearings and Appeals

In the Matter of

Dane Cty. Dept. of Human Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 195934

Pursuant to petition filed September 25, 2019, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Dane Cty. Dept. of Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Wednesday, November 27, 2019 at 11:00 AM at Madison, 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:

Dane Cty. Dept. of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Dane County who received FS benefits in Dane County from May 1, 2016 through March 1, 2018.
2. On May 13, 2016, the agency received an alert of unreported wages from ██████████ ██████████ for the respondent. The case was pended for verification.

3. On May 18, 2016, the respondent submitted an employer verification and reported to the agency that her employment at ██████████ ended.
4. On May 19, 2016, the respondent reported to the agency that she her employment at █████ ended and she had been rehired at █████.
5. On May 24, 2016, the respondent submitted an online Six Month Report Form (SMRF). She reported a residence in Madison. She reported a household of 4 that included herself and three minor children. She reported her employment at ██████████ ended on May 21, 2016. She reported the reason for leaving as “better employment offer.” She also submitted an employer verification form from ██████████ reporting that she worked 30 hours/week at \$9/hour.
6. On November 23, 2016, the respondent submitted an online renewal. She reported a residence in Madison. She reported a household of 4 that included herself and three minor children. She reported employment at ██████████ with a start date of April 21, 2014 and pay of \$9.00/hour.
7. On December 12, 2016, the respondent completed a FS phone interview. She reported she was employed at ██████████ approximately 20 hours/week. On December 13, 2016, the agency received an employer verification reporting the respondent worked 32 hours/week at \$9/hour.
8. On December 29, 2016, the agency contacted the respondent to inquire about the inconsistency in the number of hours worked. Respondent reported she works 30 hours/week.
9. On May 17, 2017, the agency received a wage discrepancy alert. The respondent’s case was pended for pay statements. Case comments note that respondent had provided employer verifications but no pay statements. It is also noted that the wage match showed wages from █████ but not ██████████.
10. On June 5, 2017, the agency received an employer verification from ██████████ reporting the respondent worked 30 hours/week at \$9/hour.
11. On June 7, 2017, the agency noted that no wages had been reported for the respondent from ██████████ since 2nd quarter 2015.
12. On June 7, 2017, the respondent reported to the agency that she only works at ██████████.
13. On June 8, 2017, when questioned about wage matches at the ██████████, the respondent reported that her sister worked at █████. The agency worker contacted █████ and was informed the respondent was currently employed at █████.
14. On July 7, 2017, the respondent reported to the agency that her employment at ██████████ ended in June 2017. She reported she was only working for █████. The agency verified the respondent worked at █████ 40 hours/week.
15. The state wage match for the respondent indicates she has not had wages from ██████████ since the 2nd quarter of 2015. She has wages from █████ beginning in the 4th quarter of 2015 and continuing through the 2nd quarter of 2019. The wage information for the respondent from The Work Number indicates she as hired by the █████ on September 14, 2015, 40 hours/week @ \$15.39/hour. In 2016, she earned \$27,853.49. In 2017, she earned \$30,745.32. In 2018, she earned \$8,251.36 in the 1st quarter.
16. On May 3, 2018, the agency established FS overpayment claims in the amount of \$5,451 to recover FS overissuances from the respondent for the period of July 1, 2016 – July 31, 2017 due to failure to report accurate income information. The respondent did not appeal the overpayment claims.
17. On September 30, 2019, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent intentionally failed to report employment when applying for FS benefits.
18. The respondent failed to appear for the scheduled November 27, 2019 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

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. 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. Therefore, I must determine whether the respondent committed an IPV based solely on the evidence that the petitioner presented at hearing.

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.

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. The petitioner submitted evidence that the respondent was employed at [REDACTED] from 2015 – 2018, 40 hours/week at approximately \$15/hour. The respondent did not report this employment during her renewals and SMRFs. Instead the respondent repeatedly reported that she worked at [REDACTED], 30 hours/week at \$9/hour. She submitted employer verifications from [REDACTED] but did not submit pay statements as verification. The state wage match demonstrates the respondent had not worked at [REDACTED] since the 2nd quarter of 2015. Therefore, the evidence is clear that she was submitting forged verifications. The state wage match and contact with the [REDACTED] demonstrate the respondent was working there but she had not reported the employment. Based on the evidence, I conclude the petitioner has met its burden to demonstrate that the respondent intentionally failed to accurately report her earned income in order to obtain FS benefits that she was not entitled to receive. 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 applicants/recipients of FS benefits must provide accurate and truthful information.
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

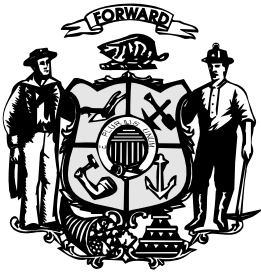
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified 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 Milwaukee,
Wisconsin, this 2nd day of January, 2020

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

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



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The preceding decision was sent to the following parties on January 2, 2020.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability

