



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOF - 201974

PRELIMINARY RECITALS

Pursuant to a petition filed on May 6, 2021, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General regarding FoodShare benefits (FS), a hearing was held on June 22, 2021, by telephone.

The issue for determination is whether the agency correctly seeks a finding of first Intentional Program Violation and imposition of a one year administrative disqualification for failure to report mandatory household composition.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On or about June 20, 2016, petitioner's son ██████████ completed and signed numerous employment application forms, tax documents and an employment contract for employment as an IRIS-funded paid home caregiver for petitioner, beginning July 1, 2016. (Exhibit 4)
3. On July 20, 2016, IRIS received a work requested from ██████ to add ██████ as provider effective 7 7 2016. (Exhibit 4)
4. ██████ received wages from IRIS / ██████ paid bimonthly from August 12, 2016 to 2/15/2020 based on timesheets submitted by petitioner. (Exhibit 4)
5. On September 8, 2016 and Sept 25 2016, ██████ called IRIS to inquire regarding missing or delayed paychecks for ██████. (Exhibit 4)
6. On November 17, 2016, ██████ completed a FS renewal by telephone, reporting ██████ as one of five members of her household but failing to report that he had earned income.
7. On November 18, 2016, petitioner received an About Your Benefits notice instructing her regarding FS reporting requirements. (Exhibit 3b)
8. On June 5, 2017, ██████ submitted a six month report form (SMRF) for FS, including ██████ as a household member but failing to report his earned income.
9. On June 29, 2017, June 19, 2019 and July 28, 2020, the FS agency mailed to ██████ an Enrollment and Benefits Booklet, providing information about FS fraud, intentional program violations and FS rules, including income reporting rules.
10. On January 8, 2018, ██████ completed her SMRF, including ██████ in her household but failing to report his earned income.
11. On June 21, 2018, ██████ completed her FS renewal by telephone, including ██████ in her household but failing to report his earned income.
12. On June 22, 2018, the agency issued to ██████ a case summary based on information she provided and instructing her to contact the agency if anything in the summary was incorrect. The summary included no wages for ██████. ██████ did not contact the agency to correct the wage information.
13. On January 17, 2019, ██████ submitted an online Access SMRF, reporting ██████ as a household member but failing to report his earned income. (Exhibit 3i)
14. On January 21, 2019, the agency issued to ██████ About Your Benefits notice regarding her ongoing FS eligibility which included her reporting instructions.(Exhibit 3j)
15. On June 21, 2019, ██████ completed her FS renewal by telephone, including ██████ in her household but failing to report his earned income. (Exhibit 3k)
16. On June 21, 2019,) the agency issued to ██████ an About Your Benefits notice instructing her to regarding her FS eligibility and including her reporting instructions. (Exhibit 3l)
17. On January 28, 2020, ██████ completed an Access online SMRF, reporting ██████ in the household but failing to report his earned income.
18. On July 27, 2020, ██████ completed a FS renewal by telephone, reporting ██████ in the household and failing to report a change in his earned income. (Exhibit 2)
19. On June 2, 2021, the agency filed with the Division a petition for a 12 month administrative disqualification of ██████ from FoodShare for an intentional program violation for failure to report household income.

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).

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.

Further, Wisconsin Jury Instruction – Civil 205 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.

A household's income is one of the criteria used to determine eligibility for the FS program, and if eligible, the amount of the FS benefit a household receives. See, 7 C.F.R. § 273.9 and WI FS Handbook, 4.3.1. The record establishes that respondent failed to report that her son ██████████, a member of her FS household, was employed during all SMRFs and renewals that occurred between November 2016 and January 2020. At hearing, ██████████ did not dispute that ██████████ had earned income paid by ██████████, for performing IRIS-funded home care for her during that entire period of time. She did not deny that she included him in her household for FS and that failed to report his income at any time to the FS agency.

██████████ testified that she was unaware that she was required to report his income and assumed that it was already "in the system." Petitioner's contentions are not plausible. She did not allege any erroneous instructions from the agency or any basis for concluding that FS income reporting instructions did not apply. Her assertion that she believed the agency already had ██████████'s income information is not credible. Following renewals and SMRFs, the agency sent petitioner notices summarizing the information she provided and which her FS allotment was based on, making it clear that it was not counting earned income for ██████████.

The most reasonable inference to be drawn is that the respondent intentionally withheld ██████████'s earned income information because it had the potential to result in her FS benefits being reduced or terminated. This is not a case of a one-time or infrequent oversight. ██████████ consistently omitted ██████████'s earned income in numerous applications, renewals and reports over a period of over three years, contrary to clear, consistent and repetitive written instructions.

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 recipient cannot intentionally provide false information or withhold facts to obtain FS benefits.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

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

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, 4822 Madison Yards Way, 5th Floor North, 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.

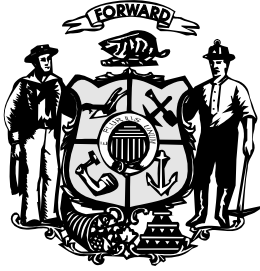
APPEAL TO COURT

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 4th day of August, 2021

\s _____
Beth Whitaker
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 August 4, 2021.

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

