



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 - 204953

Pursuant to petition filed April 13, 2022, 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) one year, a hearing was held on Wednesday, May 25, 2022 at 09:15 AM at Shell Lake, 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:

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

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Washburn County who received FS benefits in Washburn County from at least March 1, 2019 through February 28, 2022.

2. On February 22, 2019, the respondent reported that a household member had begun employment at [REDACTED]. The agency informed the respondent that she was required to have the new employer complete an employment verification form (EVFE). On February 23, 2019, the respondent submitted an EVFE to verify the [REDACTED] income. The respondent continued to submit EVFEs for the [REDACTED], purportedly from that employer, on August 15, 2019 and September 13, 2019. A state wage discrepancy match flagged the case as income from [REDACTED] [REDACTED] appeared to be significantly higher than what respondent was reporting. Upon questioning, the respondent submitted additional EVFEs, again purportedly from [REDACTED], which confirmed the income amount as reported by the respondent.
3. On August 20, 2021, the respondent reported that a household member had begun employment at [REDACTED] and that his employment at [REDACTED] had ended. Again, the agency requested wage verification and again the respondent submitted an EVFE online that was purportedly from [REDACTED] with wage verification. The respondent continued to report the employment at [REDACTED] and submitted another wage verification purportedly from the employer in January 2022.
4. In February 2022, an agency worker discovered a state wage discrepancy that noted the respondent's household member earned significantly more money at [REDACTED] [REDACTED] [REDACTED] than what was being reported. At that time, the agency worker asked the respondent to submit actual paystubs rather than an EVFE to verify income. The respondent then stated that the household member had moved out of the home on January 5, 2022.
5. In February 2022, the agency worker contacted [REDACTED] directly and provided copies of the EVFEs to that employer to question their veracity. That employer stated that he did not believe any of the EVFEs submitted by the respondent were actually completed by one of their supervisors because the company never had a supervisor named [REDACTED] (name given as the supervisor on the EVFEs). Furthermore, [REDACTED] confirmed that the respondent's household member worked full-time for the entire duration of his employment, which was not noted on the EVFEs that the respondent submitted.
6. In February 2022, the agency worker also contacted [REDACTED] regarding the accuracy of the EVFEs that the respondent submitted for that employer. [REDACTED] reviewed the EVFEs submitted by the respondent and noted that neither manager listed on the EVFEs completed those EVFEs.
7. On April 13, 2022, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent provided forged documents to the agency to obtain FS benefits that she was not eligible to receive due to being over income. Petitioner noted that if the respondent had submitted accurate EVFEs, she would not have been eligible to receive FS benefits.
8. The respondent failed to appear for the scheduled May 25, 2022 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.

In this case, the respondent was required to submit income verification forms directly from the employer to the agency. Instead, she submitted forms that were not completed by the employer for two separate employers. Furthermore, she submitted these forms on multiple occasions over the course of years. Clearly, the respondent knew that the EVFE forms that she was submitting were not completed by the employers. Her actions can only be construed as intentional.

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 participant may not intentionally misrepresent or withhold facts.
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

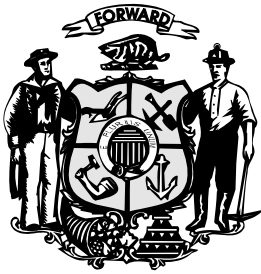
West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

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 29th day of June, 2022

\sNicole Bjork
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
- Gloria Frelk - email



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The preceding decision was sent to the following parties on June 29, 2022.

Eau Claire County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
gloria.frelk@co.eau-claire.wi.us