



# STATE OF WISCONSIN

## Division of Hearings and Appeals

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In the Matter of

La Crosse County Department of Human Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 206644

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Pursuant to petition filed October 25, 2022, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the La Crosse County Department of Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on Friday, January 6, 2023 at 09:30 AM at La Crosse, Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

### PARTIES IN INTEREST:

#### Petitioner:

La Crosse County Department of Human Services  
By: Bob Uebele  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

#### Respondent:

██████████ (no appearance)

### ADMINISTRATIVE LAW JUDGE:

Peter McCombs  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of La Crosse County.
2. The respondent used the FS benefits issued to ██████████ during the period of September 4, 2022 through September 7, 2022. The respondent was not a member of ██████████ FS food unit.

3. On August 28, 2022, [REDACTED] was incarcerated. Soon after the respondent was incarcerated an agency worker noted that his FS card was being used by a third party, 13 times in a five-day span between September 4-8, 2022. [REDACTED]'s FS benefits closed effective October 1, 2022 because of the incarceration.
4. [REDACTED] met with Mr. Uebele on September 12, 2022. He told Mr. Uebele that he gave his FS card to a friend to help her with bills and to keep open a place for him to live when he gets out of jail.
5. The respondent first received FS in July, 2021. On June 6, 2022, the petitioner issued a notice to the respondent specifically stating that FS benefits could not be traded and could not be used by non-household members.
6. On October 28, 2022, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent used FS benefits of [REDACTED] while he was incarcerated. The respondent has no prior IPV findings.
7. On October 28, 2022, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent used FS benefits of [REDACTED] while he was incarcerated.
8. The respondent failed to appear for the scheduled January 6, 2023 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 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. 7 C.F.R. §273.16(b).

To establish that an FS recipient has committed an IPV, the petitioner 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).

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.

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.

Wisconsin law specifically identifies FS violations:

946.92 Food stamp offenses.

(1) In this section:

(a) “Eligible person” means a member of a household certified as eligible for the food stamp program or a person authorized to represent a certified household under 7 USC 2020 (e) (7).

(b) “Food” means items that may be purchased using food stamp program benefits under 7 USC 2016 (b).

(c) “Food stamp program” means the federal food stamp program under 7 USC 2011 to 2036a.

(d) “Supplier” means a retail grocery store or other person authorized by the federal department of agriculture to accept food stamp program benefits in exchange for food under the food stamp program.

(dm) “Traffic food stamp program benefits” means to do any of the following:

1. Buy, sell, steal, or otherwise accomplish the exchange of, directly, indirectly, in collusion with others, or individually, food stamp program benefits issued and accessed through the electronic benefit transfer program under s. 49.797, or by manual voucher and signature, for cash or other consideration that is not food.

2. Exchange firearms, ammunition, explosives, or controlled substances, as defined in 21 USC 802, for food stamp program benefits.
  3. Use food stamp program benefits to purchase food that includes a container deposit for the sole purpose of discarding the container contents and returning the container for a cash refund of the deposit.
  4. Resell food purchased with food stamp program benefits for the purpose of obtaining cash or other consideration that is not food.
  5. Purchase, for cash or other consideration that is not food, food that was previously purchased from a supplier using food stamp program benefits.
  6. Any other action that is trafficking under 7 USC 2011 to 2036a.
- (e) "Unauthorized person" means a person who is not one of the following:
1. An employee or officer of the federal government, the state, a county, a multicounty consortium, or a federally recognized American Indian tribe acting in the course of official duties in connection with the food stamp program.
  2. A person acting in the course of duties under a contract with the federal government, the state, a county, a multicounty consortium, or a federally recognized American Indian tribe in connection with the food stamp program.
  3. An eligible person.
  4. A supplier.
  5. A person authorized to redeem food coupons under 7 USC 2019.
- (2)
- (a) No person may misstate or conceal facts in a food stamp program application or report of income, assets or household circumstances with intent to secure or continue to receive food stamp program benefits.
  - (b) No person may knowingly fail to report changes in income, assets or other facts as required under 7 USC 2015 (c) (1) or regulations issued under that provision.
  - (c) No person may knowingly issue food stamp program benefits to a person who is not an eligible person or knowingly issue food stamp program benefits to an eligible person in excess of the amount for which the person's household is eligible.
  - (d) No eligible person may knowingly transfer food stamp program benefits except to purchase food from a supplier or knowingly obtain or use food stamp program benefits for which the person's household is not eligible.
  - (e) No supplier may knowingly obtain food stamp program benefits except as payment for food or knowingly obtain food stamp program benefits from a person who is not an eligible person.
  - (f) No unauthorized person may knowingly obtain, possess, transfer, or use food stamp program benefits.
  - (g) No person may knowingly traffic food stamp program benefits.

Wis. Stat. §946.92 (emphasis added).

In this case, respondent did not appear at the hearing. If the person suspected of the IPV (or his or her representative) cannot be located or fails to appear without good cause the hearing must be conducted without the IPV suspect being represented. 7 C.F.R. 273.16(e)(4).

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional Program violation but a hearing official later

determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. In instances where good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice . . . , the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

7 C.F.R. § 273.16(e)(4) (2011).

The respondent did not present a good cause reason for failing to appear at the hearing. Therefore, the determination of whether respondent committed an FS IPV must be based solely on what the petitioner presented at the hearing.

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. A person is allowed to use an FS card only if authorized. Wis. Stat., §946.92(2)(f); *FS Handbook*, §7.3.2.4. Benefits can be used only for the FS household they are intended. 7 C.F.R. §274.7(a).

### **CONCLUSIONS OF LAW**

1. The respondent violated, and intended to violate, the FS program rule specifying that FS can only be used by and for the FS household to which it is issued, pursuant to 7 C.F.R. §274.7(a).
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.

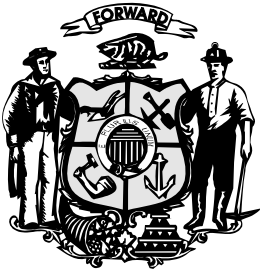
Given under my hand at the City of Madison,  
Wisconsin, this 6th day of February, 2023



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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals

- c: Western Region For Economic Assistance - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- Bob Uebele - email



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAMail@wisconsin.gov](mailto:DHAMail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 6, 2023.

La Crosse County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability

