



# STATE OF WISCONSIN

## Division of Hearings and Appeals

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In the Matter of

Portage County Health & Human Services Department, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 207027

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### PRELIMINARY RECITALS

Pursuant to petition filed December 2, 2022, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Portage County Health & Human Services Department, by its agents at the Western Region for Economic Assistance (a Consortium), to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, a telephonic hearing was held on Wednesday, January 25, 2023 at 09:30 A.M at Madison, Wisconsin.

The issue for determination is whether the respondent committed a first offense Intentional Program Violation (IPV) of the Food Share Program.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

By: Tonia Hansen, WREA - IPV Specialist  
c/o Portage County Health & Human Services Department  
817 Whiting Avenue  
Stevens Point, WI 54481-5234

Respondent:

██████████ (Did Not Appear)

██████████

██████████

██████████

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren

Division of Hearings and Appeals

## FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of La Crosse County who received FS benefits in La Crosse County from at least May 26, 2022 through October 31, 2022.
2. On May 26, 2022, the respondent filed an application for FS in La Crosse County stating that [REDACTED], a non-related adult, was living in her FS household and residence. She acknowledged the application as true and correct.
3. On June 6, 2022, the respondent attended an interview and reported that [REDACTED] was living with her and in her FS group.
4. In October, 2022, [REDACTED] filed his own application for FS at a county agent of the Department unspecified in this record; when contacted by the Department's agents, he stated he had not been living with respondent [REDACTED] at any time on or since May 26, 2022.
5. On December 2, 2022, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent intentionally made a false or misleading statement about household composition, i.e., she stated in her application and at interview that [REDACTED] lived in her FS household, and he did not.
6. The respondent's FS household received more FS in May – October, 2022, than it would have if she had not falsely reported [REDACTED] lived in her household.
7. The respondent failed to appear for the scheduled January 25, 2023 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear. As a result of her default, she has not contracted any of the Findings of Fact above with any credible rebuttal evidence or testimony.

## 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., 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.

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 by providing false and misleading information in violation of 7 C.F.R. § 273.16(c)(1) and causing the Department’s agents to believe [REDACTED] was a member of her FS household. Further, as a direct result this violation caused her to receive more FS in May – October, 2022 than she would have otherwise received without [REDACTED] in her FS household, based upon the testimony of Tonia Hansen for the petitioner at the hearing.

This violation was the first such intentional program violation of 7 C.F.R. § 273.16(c)(1) 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, FS program regulation 7 C.F.R. § 273.16(c)(1) by intentionally misrepresenting her household composition and reporting on May 25, 2022, that non-related adult [REDACTED] lived with her; thereby increasing her FS household size and entitling the household to more FS than it would have received if he had not been so residing.
2. [REDACTED] was not living with the respondent from May 25 - October 31, 2022; reporting him to do so caused respondent to receive more FS in this time period than she was otherwise entitled to receive.
3. 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 [REDACTED] 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.

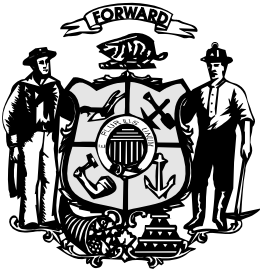
Given under my hand at the City of Madison,  
Wisconsin, this 6th day of February, 2023



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\sKenneth D. Duren  
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  
Tonia Hanson – email





## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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

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

