



STATE OF WISCONSIN

Division of Hearings and Appeals

In the Matter of

Dane Cty. Dept. of Human Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 210606

Pursuant to petition filed October 9, 2023, 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) for a period of one year, a hearing was held on Thursday, January 4, 2024 at 10:00 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:

Beth Whitaker
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 June 27, 2022 through August 31, 2023.
2. On June 27, 2022, respondent applied for FS benefits for a household of three people, including ██████████, reporting no earned income.

3. The agency issued to respondent an About Your Benefits notice regarding her FS eligibility and instructed her to report household income exceeding \$2,379 per month.
4. From July 5, 2022 through October 20, 2022, [REDACTED] was employed by [REDACTED].
5. From August 26, 2022 through November 5, 2022, [REDACTED] was employed by [REDACTED].
6. From August 26, 2022 through at least May 24, 2023, respondent was employed at [REDACTED].
7. Respondent was paid for 45.75 hours to 80 hours per biweekly pay period during her entire employment with [REDACTED].
8. On September 9, 2022, respondent contacted the agency to report that she was homeless.
9. On September 30, 2022, respondent's FS case closed for lack of verification of income/employment for [REDACTED] at [REDACTED].
10. On October 12, 2022, respondent called and agreed with Federal Data Hub wages for [REDACTED] from [REDACTED] but failed to report income for her or [REDACTED] from [REDACTED].
11. On November 18, 2022, respondent submitted an ACCES online change report that [REDACTED] employment with [REDACTED] ended October 23, 2022. She did not report her or [REDACTED] employment with [REDACTED].
12. On November 27, 2022, respondent submitted an ACCESS online Six Month Report Form (SMRF) indicating that there were three members of her household, including [REDACTED] [REDACTED], that she had a rent expense and there was no household income.
13. From November 28, 2022 though February 19, 2023, [REDACTED] was employed with [REDACTED] ([REDACTED]).
14. On December 2, 2022, respondent contacted the agency by telephone to ask about FS closure and stated that she actually had no rent expense because her hotel housing expenses were paid by friends and family and reported that [REDACTED] employment with [REDACTED] ended and her employment and [REDACTED] employment with [REDACTED] ended.
15. On December 5, 2022, the agency issued to respondent an About Your Benefits notice informing her that effective December 1, 2022 she would continue to receive FS benefits in the amount of \$740 per month for a household of three people, based on a report of no household income.
16. On December 5, 2022, the agency issued to respondent a summary of information she provided in her SMRF, including the absence of any household income and instructed her to report incorrect information by December 14, 2022.
17. On March 20, 2023, the agency received a SWICA wage match discrepancy regarding petitioner's employment with [REDACTED] and [REDACTED] employment with [REDACTED].
18. Respondent's FS case closed due to lack of verification of income/employment for respondent and [REDACTED].
19. On May 18, 2023, respondent re applied for FS for a household of two people, reporting [REDACTED] out of the home.
20. On June 20, 2023, the agency received verification of respondent's employment with [REDACTED].
21. On June 30, 2023, respondent's FS closed for income above the program limit.
22. On October 10, 2023, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that made a false or misleading statement regarding 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.

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

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).

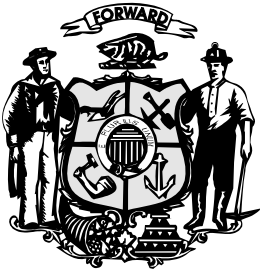
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of January, 2024



\sBeth Whitaker
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
- Monica Johnson - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAMail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 4, 2024.

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

