



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

Brown County Human Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 210667

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Pursuant to petition filed October 12, 2023, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Brown County Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of two years, a hearing was held on Thursday, November 30, 2023 at 09:00 AM by teleconference initiated from 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:

Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301  
By: Sharon Johnson

Respondent:

██████████  
██████████████████  
████████████████████

Did Not Appear

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # ██████████) is a resident of Brown County who received FS benefits in Brown County from 2013 through September 2023 with occasional interruptions in benefits.

2. From September 2018 through August 2019, Respondent was disqualified from the FS program after signing a FoodShare Waiver of Administrative Disqualification Hearing form. On that form, she checked a box indicating that she admitted to the agency's allegation; namely, that she committed an intentional program violation when she used another individual's QuestCard.
3. On October 9, 2019, Respondent reapplied for FoodShare as a one-member household and was found eligible. She completed a FS renewal on November 10, 2021 and was again found eligible.
4. Respondent's adult daughter, [REDACTED], received FS as a one-member household from February 2020 through July 2022 with occasional interruptions in benefits.
5. From one to three times in 2022, Respondent gave [REDACTED] cash in exchange for [REDACTED] FS card. On various dates in 2022, Respondent used [REDACTED] FS card to buy food that was not for [REDACTED] benefit.
6. On October 26, 2023, the agency prepared and mailed an Administrative Disqualification Hearing Notice alleging that Respondent violated FoodShare rules by using [REDACTED] Quest Card to purchase food for herself and that the agency was seeking to disqualify him from the FS program for two years.
7. The hearing notice sent to Respondent instructed her that a hearing would occur on November 30, 2023 at 9:00AM via telephone and instructed her to call the undersigned administrative law judge to provide a contact phone number prior to that time. She did not do so.
8. The agency mailed the hearing notice along with its exhibits to Respondent's correct current mailing address. That correspondence was not returned to the agency.
9. Respondent failed to appear for the scheduled November 30, 2023 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

### DISCUSSION

An intentional program violation (IPV) of the FoodShare (FS) 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 individual who commits an IPV can be disqualified from participation in the FS program. The length of the disqualification period depends, in part, on the nature of the IPV. See 7 C.F.R. § 273.16(b). Generally, an individual will be disqualified for twelve months after committing a first IPV, for two years after committing a second IPV, and permanently after committing a third IPV. See 7 C.F.R. § 273.16(b)(1). The agency can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. 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).

An IPV 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.

When an administrative disqualification hearing is scheduled and the respondent does not appear, the hearing shall nevertheless proceed if the respondent cannot be located or fails to appear without good cause. See 7 C.F.R. §273.16(e)(4). Here, the evidence in the record established that the agency mailed a hearing notice to Respondent at her preferred mailing address. Respondent did not however appear at the hearing and has not, as of the date of this decision, contacted the Division of Hearings and Appeals to claim a good cause reason for not attending the hearing.

To establish, at hearing, that a FS recipient has committed an IPV, the petitioner must provide the following two separate elements through the presentation of clear and convincing evidence: (1) the recipient committed a program violation; and (2) the recipient 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.

Pursuant to federal regulation, eligible food program benefits may be used only by a FS household or by an individual the FS household selects to purchase eligible food *for the household*. 7 C.F.R. §274.7(a). Consistent with the above-cited federal regulation, Wisconsin FS policy states:

The cardholder is the only person that can make authorized purchases on the QUEST card, unless he or she verbally authorizes another person to make purchases on their behalf for their assistance group.

[Emphasis added.] *FoodShare Wisconsin Handbook* §7.3.2.4.

Moreover, Wisconsin statute prohibits the trafficking of FoodShare benefits and defines trafficking to include the buying of FoodShare benefits for cash. See Wis. Stat. §946.92(1)(dm) and (2)(a).

The agency here contended that Respondent committed an intentional program violation by using FS benefits that were issued to her adult daughter, [REDACTED], who was not a member of Respondent's household and that the purchases were not made for [REDACTED] benefit. The agency produced EBT card transaction reports showing dates, times, and locations of purchases made using both Respondent's and [REDACTED] cards. Those reports show multiple times when transactions were attempted with both cards a minute apart at the same vendor location. The agency also called the Brown County law enforcement officer who investigated Respondent's and [REDACTED] FS usage as a witness. And, he credibly testified that Respondent admitted to him using [REDACTED] card and also to paying [REDACTED] for use of her FS card.

The agency contended that this was Respondent's second IPV and produced documentation showing that Respondent was disqualified from the FS program in 2018 after the agency found and after she admitted to using FS benefits issued to another individual. Respondent thus had every reason to understand that her actions in using [REDACTED] FS card were against program rules. Respondent did not appear at the hearing to rebut or explain the agency's persuasive evidence.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated 7 C.F.R. §274.7(a) by using [REDACTED] FS card and Wis. Stat. §946.92(2)(a) by paying [REDACTED] for her FS benefits. These violations were the second occasion of Respondent committing an IPV. Therefore, the agency correctly seeks to disqualify the respondent from the FS program for two years.

### **CONCLUSIONS OF LAW**

1. The respondent violated and intended to violate 7 C.F.R. §274.7(a) and Wis. Stat. §946.92(2)(a) and thereby committed an intentional program violation as that term is defined in 7 C.F.R. § 273.16(c).
2. The violation specified in Conclusion of Law No. 1 was the second occurrence of an intentional program violation by Respondent.

**NOW, THEREFORE, it is ORDERED**

That the agency's determination is sustained, and that the petitioner may make a finding that the respondent committed a second IPV of the FoodShare program and disqualify the respondent from the program for two years, 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.

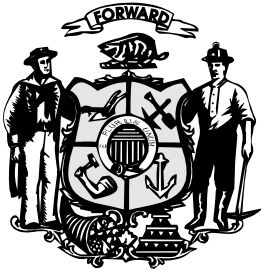
Given under my hand at the City of Madison, Wisconsin,  
this 16th day of January, 2024



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\sTeresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals

- c: Bay Lake Consortium - email
- Public Assistance Collection Unit - email
- Division of Health Care Access and Accountability - email
- Sharon Johnson - email



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 16, 2024.

Brown County Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[REDACTED]