



## STATE OF WISCONSIN Division of Hearings and Appeals

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In the Matter of

Waukesha County Health and Human Services, Petitioner

vs.

[REDACTED], Respondent

DECISION

Case #: FOF - 211988

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### PRELIMINARY RECITALS

Pursuant to petition filed February 2, 2024, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Waukesha County Health and Human Services to disqualify [REDACTED] from receiving FoodShare benefits (FS) one year, a hearing was held on Thursday, March 14, 2024 at 09:00 AM at Waukesha, 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:

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

Respondent:

[REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Nicole Bjork  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. The respondent (CARES # [REDACTED]) is a resident of Waukesha County who received FS benefits in Waukesha County from at least July 17, 2023 through December 31, 2023. The respondent had previously received FS benefits in 2022. She had received an Enrollment and Benefits booklet that detailed FS rules and regulations, including that she was accurately required to report her income.

2. On July 17, 2023, the respondent applied for FS benefits. She reported that she did not have any income. She asked for the notices to be sent to her account online. As part of the application process, she had a telephone interview where she was again asked if she was employed. She specifically stated that she was not. Based on that information, the respondent was approved to receive FS benefits. The agency then sent a notice to the respondent summarizing her application responses, including that she reported no employment. The notice further instructed the respondent to contact the agency if that information was incorrect. Another notice was then sent to the respondent notifying her that she was approved to receive FS benefits, but that she was required to report if her household's gross monthly income exceeded the income limit by the 10<sup>th</sup> day of the month following the month it exceeded that limit.
3. The agency received a state wage discrepancy alert that the respondent had unreported employment. The agency obtained employment verification, establishing that the respondent had been employed since May 2023 with [REDACTED]. The respondent had never reported that employment or income.
4. On February 5, 2024, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent failed to accurately report her income on her FS application on July 17, 2023.
5. The respondent appeared at the hearing. She testified that she never received any notice. However, the agency representative noted that the respondent had asked for all of her notices to be sent electronically to her account online, which they were. The respondent then stated that she wasn't employed on the date that she applied for FS. However, the wage verification received from [REDACTED] establishes that she was employed since May 2023, and she applied on July 17, 2023.

## **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., 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.

In this case, the respondent had received FS benefits in 2022. She then reapplied for FS benefits on July 17, 2023, and stated that she was unemployed. She reiterated that she was unemployed during a telephonic interview. However, the evidence establishes that she was employed since May 2023. Clearly the respondent was aware that she was employed when she reported, repeatedly, that she was not. 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 make a false or misleading statement or 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.

**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).

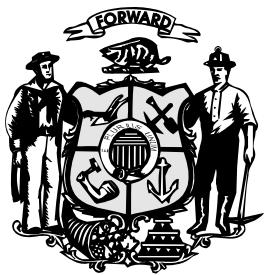
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee, Wisconsin, this 23rd day of April, 2024

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\sNicole Bjork  
Administrative Law Judge  
Division of Hearings and Appeals

c: Moraine Lakes Consortium - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
Kathleen Jones - email



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 23, 2024.

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