



Rhode Island Executive Office of Health and Human Services
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April 1, 2015

Docket # 14-1927

DOB: [REDACTED]

Hearing Date: March 10, 2015



ADMINISTRATIVE DISQUALIFICATION HEARING DECISION

The Administrative Disqualification Hearing has been decided in the Agency's favor. During the course of the proceeding, the following issues(s) and Agency regulation reference(s) were the matters before the hearing.

CODE FEDERAL REGULATION: FOOD AND NUTRITION SERVICE 7 CFR 273.16-DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION

R.I. DEPARTMENT OF HUMAN SERVICES (DHS) RULES®ULATIONS: SNAP SECTION: 1034-INTENTIONAL PROGRAM VIOLATIONS

The facts of your case, applicable rules and regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the respondent), and Agency representatives Lisa Vingi, Christine Messier, Donna Yeadon, Michael Fallon, William O'Donnell, Marianne Nerbonne, and the Food Stamp Corrective Action Unit.

Present at the Administrative Disqualification hearing convened on the above cited date was: Lisa Vingi (RI Department of Human Services Fraud Investigator).

ISSUE: Did you, the respondent, commit an intentional SNAP Program violation by making a false statement, or by misrepresenting, concealing or withholding facts?

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

POLICIES:

The CODE FEDERAL REGULATION: FOOD AND NUTRITION SERVICE

Section 7 CFR 273.16(e)(6) Criteria for determining intentional program violation, states:

The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section.

Section 7 CFR 273.16(c) Definition of intentional program violation, states:

Intentional Program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or*
- (2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).*

The R.I. DHS POLICY MANUAL: Supplemental Nutrition Assistance Program (SNAP)

Section 1034.15 Criteria for Determining an IPV, states:

The hearing authority must base the determination of intentional program violation on clear and convincing evidence, which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined below:

- made a false statement, or misrepresented, concealed facts or withheld facts;*
- or*
- committed any act that constitutes a violation of the Food and Nutrition Act of 2008, as amended, 7 USC 2011-2036, the Supplemental Nutrition Assistance Program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits or EBT cards.*

An Administrative Disqualification Hearing was convened on March 10, 2015 to examine the charge that the respondent had committed an Intentional Program Violation of the Supplemental Nutrition Assistance Program (SNAP) regulations. The respondent failed to appear at both the initial hearing scheduled to take place on December 17, 2014; and, at the second hearing convened on March 10, 2015. In accordance with 7CFR 273.16(e)(3) and Section 1034.25.10 of the DHS Policy manual, the Agency provided at least thirty (30) days advance notice, in writing, of the scheduling of these hearings. The notices were sent by first class mail to the respondent's mailing address of record and have not been returned.

In accordance with 7CFR 273.16(e)(4), the hearing was conducted without the respondent present or represented. Even though the respondent was not present or represented, the Administrative Disqualification Hearing Officer is nonetheless required to carefully consider the evidence and determine if an Intentional Program Violation had occurred, in accordance with the standard of clear and convincing evidence. If within ten (10) days of the decision, the respondent presents good cause for failure to appear at the hearing, the Administrative

disqualification hearing officer who originally ruled on the case may conduct a new hearing and issue a new decision.

DISCUSSION OF THE EVIDENCE:

The record of hearing consists of the testimony and documents submitted into evidence at the hearing.

The Agency representative, in her statements, maintained that the respondent had knowingly allowed use of his EBT card during a period of time in which he was incarcerated. While incarcerated in May 2014, twenty six transactions were charged to his EBT card, totaling \$227.84 in SNAP benefits. The Agency maintained that both the card and the personal PIN number needed to access the card were the sole property of the respondent.

The Agency submitted into evidence:

- An Electronic Claim panel, dated September 9, 2014, submitted by the DHS Eligibility Technician stating, "Clt (client) incarcerated ...since 4/16/2014, someone is using his card...."
- A SNAP interim report received by the Agency on August 27, 2014 directly from the respondent.
- Attached to the interim report, was a Certificate of Discharge from the Commonwealth of Massachusetts, Bristol County Sheriff's Office verifying the respondent's incarceration beginning on April 16, 2014 and terminating on June 3, 2014.
- Record of transactions from May 7, 2014 through May 25, 2014 for EBT card [REDACTED] 63 issued to the respondent and totaling \$227.84.
- A copy of the Rights and Responsibilities signature page of a SNAP application (SNAP-APP 2) signed on March 20, 2014 by the respondent.
- A copy of an Agency F20 SNAP notice dated September 30, 2014 addressed and sent to the respondent to his address of record. The notice was signed by Agency Representative Lisa Vingi informing the respondent of the alleged over-issuance of \$227.84 in benefits used during the period from May 1, 2014 to May 31, 2014 as a result of fraudulent activity. Included with the notice was an Agency RIFS-121C Waiver of Right to Administrative Disqualification Hearing, which indicated that by signing the form, he would accept a one year penalty as a result of a first violation. Also included: a DHS-155 form-Information about Administrative Disqualification Hearings-and, an F-19-summary of SNAP

overpayment calculations. Included in this packet, was a Case Log (CLOG) indicating instructions to the DHS Woonsocket Office ET to contact the client via phone and request he pick up the notice at that office.

- A copy of an Advance Notice of Administrative Disqualification Hearing letter dated November 13, 2014, sent to the respondent's address of record, informing him that a hearing was scheduled for December 17, 2014 at 9am at the DHS Providence Regional Family Center. Also included was a statement of the alleged violation, amount of over issuance, and the disqualification time frames for a first offense.
- A second copy of an Advance Notice of Administrative Disqualification Hearing Reschedule letter dated February 6, 2015 was sent to the respondent's address of record indicating a reschedule date of March 10, 2015 hearing scheduled at 10am at the DHS Providence Regional Family Center. Both letters contained identical information.

The Agency representative testified that the fraud investigation commenced upon receipt of an Electronic Claim Referral from a DHS Eligibility technician, who identified that the respondent had been incarcerated from April 16, 2014 through June 3, 2014, and his EBT card was still being used during that time. She further testified that the respondent, while incarcerated, had allowed someone else to access his EBT SNAP benefits during that time. She opined that the person using the card would have had to have access to the respondent's "secret 4 digit pin number (PIN)" in order to access the benefits. She verified that the EBT card was issued to the respondent for a single SNAP household on March 20, 2014. He was the sole authorized user of the card. She testified that the respondent had not informed the Agency of any issues on his subsequent SNAP application on August 27, 2014; that he had not filed a request for an Authorized user, and that he had not reported his card as lost or stolen. The Agency representative further testified that the EBT transactions between May 7 and May 25, 2014 resulted in an over-issuance of benefits totaling \$227.84. The Agency requested that the respondent be sanctioned from participation in the SNAP program for a period of one year for this first violation which was committed knowingly, willfully, and/or with deceitful intent. The Agency contends that they had demonstrated by clear and convincing evidence that the respondent had committed an Intentional Program Violation (IPV).

FINDINGS OF FACT:

After a careful review of the record of hearing, the following findings of fact have been established.

1. The respondent submitted a completed SNAP application (SNAP-APP2) signed on March 20, 2014. The respondent's signature appeared immediately below a statement, which in part reads as follows:

DECLARATION OF APPLICANT/RECIPIENT SNAP PENALTY WARNINGS-
I understand that:

1. Any member of my household who intentionally breaks a food stamp rule can be barred from the Supplemental Nutrition Assistance Program: *For a period of one (1) year for the first violation, with the exceptions in numbers 2. and 3. below; *For a period of two (2) years after the second violation, with the exception in number 3 below; and, *Permanently for the third occasion of any intentional program violation.

2. Individuals found by a Federal, State, or local court to have used or received SNAP benefits in a transaction involving the sale of firearms, ammunitions or explosives shall be permanently ineligible for the Supplemental Nutrition Assistance program upon the first occasion of such violation.

3. Individuals convicted of trafficking food stamp benefits of five hundred dollars (\$500) or more shall be permanently disqualified from the Supplemental Nutrition Assistance program.

4. Individuals found by the Department of having made, or convicted in a Federal or State court of having made, a fraudulent statement or representation with respect to their benefits simultaneously under the Supplemental Nutrition Assistance Program would be disqualified for a ten (10) year period.

DO NOT give false information or hide information to get or continue to get SNAP benefits.

DO NOT trade or sell EBT cards.

DO NOT use SNAP benefits to buy ineligible items, such as alcoholic drinks and tobacco.

DO NOT use someone else's EBT card for your household.

****Signature Required****

By signing this application, I certify under penalty of perjury that I have read (or have had read to me) and understand the Notice of Rights, Responsibilities, and Penalties, and that my answers are correct, and complete to the best of my knowledge and belief. I know that under the State of Rhode Island General Laws, Section 40-6-15, a maximum fine of \$1000.00 or imprisonment of up to five (5) years, or both may be imposed for a person who obtains, or aids or abets any person to obtain public assistance to which s/he is not

entitled, or who willfully fails to report income, resources or personal circumstances or increases therein which exceed the amount previously reported.

2. The respondent was the sole authorized user for EBT Card No. [REDACTED] 63, issued on March 20, 2014.
3. A September 9, 2014 Electronic Claim referral identified that between May 7, 2014 and May 25, 2014 the respondent's EBT benefits were being utilized.
4. A Certificate of Discharge from the Commonwealth of Massachusetts identifies that the respondent was incarcerated for the period between April 16, 2014 and June 3, 2014.
5. A PIN number is needed in order to access the EBT card benefits.
6. The respondent did not report his card as lost or stolen.

CONCLUSION:

After a careful review of the testimony and documents presented at hearing, this Hearing Officer concludes the following:

1. The respondent was aware of his rights and responsibilities when he signed the SNAP-APP2 on March 20, 2014.
2. While incarcerated between April and June 2014, the respondent's EBT card was used.
3. In May 2014, the respondent's EBT card was charged with twenty six transactions totaling \$227.84.
4. The respondent was the sole authorized user for the card, and as such, was responsible for his card and for his personal 4 digit pin number (PIN) used to access benefits.
5. The respondent was complicit in allowing unauthorized use of those benefits, in that someone else was given access to his PIN, in that he did not file for an authorized user, in that he did not report his card lost or stolen, and in that he did not identify misuse when filing his Interim August 2014 report form.
6. Someone other than the respondent used the EBT card for transactions totaling \$227.84 for the period from May 7, 2014 through May 25, 2014 for which they were not entitled to receive.

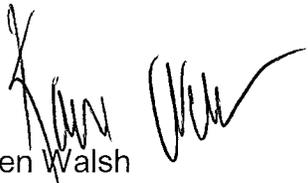
7. There is clear and convincing evidence, that the respondent did intentionally allow use of his EBT card and personal identification number in order for someone else to obtain SNAP benefits for which they were not entitled.
8. The Agency has demonstrated, by clear and convincing evidence that the respondent had, in fact, committed an Intentional Program Violation of the Supplemental Nutritional Assistance Program.
9. There is clear and convincing evidence that a Food Stamp benefit over-issuance did occur from May 7, 2014 through Mary 25, 2014 due to the Intentional Violation.

As a consequence, you, as head of household, will not be eligible to participate in the SNAP Program for one year, per 7 CFR273.16 (b)(1)(i), which states in part:

...Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program: For a period of twelve months for the first intentional Program violation, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section;...

The Department's Claims, Collections, and Recoveries Unit is charged with the responsibility to secure restitution for the overpayment.

Be advised that this is your first intentional violation; a second would result in a period of ineligibility for twenty four months, and a third violation would result in a permanent sanction from the Food Stamp Program.


Karen Walsh
Administrative Disqualification Hearing Officer

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.