



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

Docket # 14-2324

[REDACTED]
Hearing Date: April 9, 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) POLICY: 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, Vania Rebollo, Betty Perez, Robin Barradas, 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.

REGULATIONS:

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 REGULATIONS: 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 April 9, 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 the hearing convened on April 9, 2015. In accordance with 7CFR 273.16(e)(3) and Section 1034.25.10 of the DHS Regulations, the Agency provided at least thirty (30) days advance, 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 not returned, thus delivery was presumed.

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 applied for, and obtained, RI SNAP benefits when she was already in a second SNAP program disqualification period in the state of Massachusetts. The investigator further contends that due to the respondent's intentional omission of that information on her RI SNAP application, she received SNAP benefits to which she was not entitled.

The Agency submitted into evidence:

- A copy of an electronic claim referral received on August 12, 2014 verifying the respondent information and identifying a 24 month sanction from Massachusetts (MA).
- A Match active Food Stamp (FS) Member to the eDRS (electronic disqualification recipient system) file match summary report identifying that the respondent, social security # ending in [REDACTED] had been disqualified from participating in the SNAP program in MA beginning on October 23, 2013 for a period of 24 months.
- A copy of an eDRS query, a national federal internet based application which tracks SNAP participants found guilty of an Intentional program violation, documented the respondent's second disqualification in MA, a penalty length of 24 months, and a starting date of October 23, 2013. The investigator noted that she was unable to obtain documentation of the first disqualifying record at that time from the same national data base.
- A copy of a MA. Department of transitional assistance appeal decision dated August 2, 2013. The decision was sent to the respondent's address of record, in MA. The decision determined a finding against the respondent, and a twenty four month second violation (resulting from a previous disqualification) with a disqualification beginning on October 23, 2013. The decision finding of an intentional violation resulted from the respondent's failure to report that she was also receiving RI SNAP benefits during the period from May 18, 2012 to March 7, 2013 while receiving MA SNAP benefits simultaneously.
- A copy of the respondent's RI DHS-2 Statement of Need application signed by the respondent on January 20, 2014; and, reviewed in person and signed by the DHS ET on January 21, 2014. The investigator further called attention to

Question #1a, page four which asks, "Have you...ever been found by the Department through its Administrative Hearing processes of having made...a fraudulent statement or representation...in order to receive multiple benefits simultaneously under assistance from the...Supplemental Nutrition Assistance Program (SNAP)...The investigator noted that the respondent answered "No", and did not identify the date of her MA finding and sanction begun on October 23, 2014 and lasting two years. The investigator further noted that on page 27, the respondent signed and dated the application certifying "under penalty of perjury that my answers are correct..."and complete to the best of my knowledge and belief."

- A copy of an Agency F20 SNAP notice dated January 12, 2015 addressed and sent to the respondent to her address of record. The notice was signed by Agency Representative Lisa Vingi informing the respondent of the alleged over-issuance in benefits used during the period from October 1, 2013 through August 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, she would accept a Permanent sanction as a result of a third violation. The notice included notification of the first two MA disqualification periods. Also included: a DHS-155 form-Information about Administrative Disqualification Hearings-and, an F-19-summary of SNAP overpayment calculations. The investigator noted that the notice was not returned as undeliverable, "therefore notice is presumed."
- A copy of an Advance Notice of Administrative Disqualification Hearing letter dated March 10, 2015 and sent to the respondent's address of record, informing her that a hearing was scheduled for April 9, 2015 at 9:30am 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 third offense. This notice was not returned.
- A copy of a second query of the eDRS results dated March 27, 2015. The results documented the first and second disqualifications in MA, the penalty lengths of 12 months/and then 24 months, and the starting dates for each penalty-June 8, 2010, and October 23, 2013 respectively. The investigator testified that she had obtained information that the actual Administrative decision was not available due to the destruction of records in a flood.

The Agency representative testified that the fraud investigation commenced upon receipt of a DHS Electronic Claim Referral which indicated the respondent had a twenty four month sanction from Massachusetts (MA). She further testified and presented evidence that the respondent had received two separate sanctions in MA, the second incurred for 24 months beginning on October 23, 2013. The investigator presented evidence identifying that the second sanction resulted from receipt of MA. SNAP benefits from May 2012 to March 7, 2013 while at the same time the respondent was receiving SNAP benefits in RI. The investigator presented that while under a two year

sanction begun on October 23, 2013, the respondent then applied for SNAP benefits in R.I. The Agency representative opined that the respondent in filling out her RI SNAP Statement of Need on January 20, 2014, purposely withheld information of the current MA sanction, resulting in an intentional Food Stamp (SNAP) violation-her third. As a result of this omission she further testified that the respondent received an over issuance of \$1552.00 in benefits to which she was not entitled for the period from October 1, 2013 to August 31, 2014. The Agency representative requested that the respondent be sanctioned from participation in the Food Stamp Program **permanently** for this third 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 received a twelve month SNAP violation in MA. beginning on June 8, 2010.
2. A MA Administrative Disqualification hearing found the respondent did intentionally violate the SNAP program regulations a second time, due to her receipt of SNAP benefits in MA. from May 18, 2012 to March 7, 2013 while also receiving SNAP benefits in RI. She received a second sanction in MA. which consisted of a twenty four month penalty beginning on October 23, 2013.
3. The respondent submitted a completed and signed RI DHS-2 Statement of Need application on January 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.

I certify under penalty of perjury that my answers are correct, including information about citizenship and alien status, 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.

4. When completing her RI Statement of Needs DHS-2 form, the respondent omitted any information about her current two year MA. sanction; and answered "No" to Question #1a which asked in part, "have you ever been found by the Department through its Administrative hearing processes of having made...a fraudulent statement or representation in order to receive multiple benefits...under assistance from the Supplemental Nutrition Assistance Program (SNAP).

CONCLUSION:

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

1. A MA decision found the respondent did intentionally violate SNAP regulations as a result of fraudulently receiving duplicate SNAP benefits from MA. and RI simultaneously from May 2012 to March 2013.

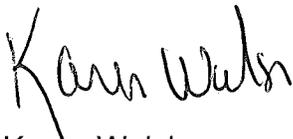
2. The respondent was disqualified in MA. from participation in the SNAP program, beginning on October 23, 2013, for a period of 24 months, as it was established that this was second SNAP violation.
3. The respondent completed and signed a RI Statement of Needs, DHS-2 on January 20, 2014 and omitted or concealed information about her current two year sanction begun in October 2013, and being served in MA. She also fraudulently answered, "No" to ever having made fraudulent representations or statements as found through an Administrative hearing process under the SNAP program.
4. Resulting from her omission, the respondent was assessed for benefits for which she was not entitled.
5. The respondent was aware of her rights and responsibilities, and the penalty of perjury when she signed the DHS-2 on January 20, 2014.
6. The respondent did intentionally and purposefully obtain RI SNAP benefits while under a twenty four month disqualification in MA. from the SNAP program, in order to obtain benefits for which she was not entitled. This intent is evidenced by the respondent's experience of two former violations, the disqualification periods already served for not reporting receipt of benefits, and her concealing information of her sanction when filling out her RI SNAP application.
7. 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.
8. There is clear and convincing evidence that a Food Stamp benefit over-issuance of \$1552.00 did occur from October 1, 2014 to August 31, 2014 due to the Intentional Violation.

As a consequence, you, as head of household, will not be eligible to participate in the SNAP Program **Permanently**, per 7 CFR273.16 (b)(1)(iii), 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: **Permanently** for the third occasion of any intentional Program violation.*

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

Be advised that as a result of your third violation you are now permanently sanctioned from participation in the Food Stamp Program (SNAP).

A handwritten signature in cursive script that reads "Karen Walsh".

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.