

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Human Services
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Docket #- 14-1309

D.O.B. [REDACTED]

Hearing Date: November 19, 2014

December 1, 2014



ADMINISTRATIVE DISQUALIFICATION HEARING DECISION

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

**A. THE DHS POLICY MANUAL:
SECTION 1034 - INTENTIONAL PROGRAM VIOLATIONS**

The facts of your case, the agency, policy, 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, Lisa Vingj, Christine Messier, Betty Perez, William O'Donnell and Policy.

Present at the Food Stamp Disqualification Hearing convened on the above cited date was Lisa Vingj (RI Department of Human Services Fraud Investigator).

ISSUE:

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

DHS POLICIES:

INTENTIONAL PROGRAM VIOLATIONS - SECTION 1034

Section 1034.15 of the Food Stamp Program Policy Manual states in part:

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 Food Stamp act, the Food Stamp program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP cards.

An Administrative Disqualification Hearing was convened on November 19, 2014 to examine the charge that the respondent had committed an Intentional Program Violation of Food Stamp Program regulation.

The respondent failed to appear at the hearing. In accordance with Section 1034 of the Food Stamp Policy manual, the agency provided at least thirty (30) days advance notice, in writing, of the scheduling of this hearing. The necessary notice was sent by first class mail to the respondent's address of record and was not returned.

In accordance with Food Stamp regulations, the hearing was conducted without the respondent present or represented. Even though the respondent was not present or represented, this hearing officer is nonetheless required to carefully consider the evidence and determine if an Intentional Program Violation had occurred. This hearing officer must find the evidence to be clear and convincing before a finding can be made that the respondent committed an Intentional Program Violation. If within ten (10) days of the issuance of this decision, the respondent presents good cause for failure to appear at the hearing, this hearing officer may conduct a new hearing and issue a new decision.

DISCUSSION OF EVIDENCE

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

The agency representative, Lisa Vingi, in her opening statement, stated that [REDACTED] intentionally violated a program rule between 12/24/13 and 7/24/14. The appellant fraudulently received SNAP benefits for [REDACTED] D.O.B. [REDACTED], who has been in the Guardianship of her grandmother, [REDACTED] since on or about July 2, 2013, and living in the State of Massachusetts with her grandmother.

The Agency representative testified that:

- The Agency representative stated that this case commenced upon receipt of a telephone call received by the Department of Human Services Fraud Unit on July 22, 2014 from [REDACTED] stating she was the grandmother of [REDACTED] and was trying to obtain assistance for [REDACTED] in the State of Massachusetts and was told that [REDACTED] was currently receiving benefits in the State of Rhode Island.
- [REDACTED] stated that she has had Guardianship of her grandchild [REDACTED] since 2013 and [REDACTED] was living with her at [REDACTED] in Franklin, MA. [REDACTED] identified her daughter, [REDACTED] as the person who possibly could be receiving benefits in the State of Rhode Island for [REDACTED] (Copy of the telephone complaint form received by the Fraud Unit submitted).

- On or about July 23, 2014, Department of Human Services Fraud Investigator Lisa Vingi received from [REDACTED] a copy of the Commonwealth of Massachusetts Probate and Family Court Letters of Appointment verifying that [REDACTED] of [REDACTED] Street in Franklin, MA. was appointed Guardian of [REDACTED] on October 1, 2013. (Copy of the Letter of Guardianship Appointment submitted).
- On or about December 23, 2013 [REDACTED] completed a SNAP Application requesting SNAP benefits for herself and one child, [REDACTED] DOB: [REDACTED]-03. Department of Human Services Social Worker Ellen Long reviewed the application with [REDACTED] for completeness and accuracy.
- Question #2 on page 3 of the application asks, "Who lives in your home? Include yourself as Member 1". [REDACTED] listed herself and daughter [REDACTED] [REDACTED] circled YES to the question, "Applying for benefits?" next to [REDACTED] name.
- [REDACTED] signed and dated the SNAP application on page 2, "certifying under penalty of perjury that I have read (or had read to me) and understand the "Notice of Rights and Responsibilities and Penalties, and that my answers are correct and complete to the best of my knowledge and belief".
- Had the Department of Human Services Social Worker Ellen Long been aware that [REDACTED] had been in the custody of her grandmother, [REDACTED] and residing in the State of Massachusetts, [REDACTED] would not have been approved for SNAP benefits for a household size of 2. (Copy of the December 23, 2013 SNAP application along with the caseworker's December 30, 2013 case log submitted to the record.)
- On or about June 27, 2014 [REDACTED] completed and submitted a Department of Human Services Interim Report Form for continuation of SNAP benefits. On page 2 Question #3 on the Interim Report Form asks, "who lives in your home?" Listed on the Interim Report Form were herself and child [REDACTED] [REDACTED] checked "no changes" to the individuals listed in her household. [REDACTED] signed and dated the Interim Report Form on May 29, 2014, "Certifying under penalty of perjury that her answers were correct and complete to the best of her knowledge and belief".
- [REDACTED] was approved for continued SNAP benefits based upon the information she provided with the Interim Report Form. If the Eligibility Technician had been aware that [REDACTED] was under the Guardianship of her grandmother, [REDACTED] and living with her in the State of Massachusetts, [REDACTED] would not have been approved for continuing SNAP benefits for this child. (Copy of the Interim Report Form submitted).
- A SNAP notice was mailed to [REDACTED] on July 30, 2014, to her address of record: [REDACTED], North Kingstown, RI [REDACTED]. The Notice was sent First-Class Mail. The First Class Mail was not returned, therefore the Notice was presumed to be delivered. The SNAP Notice included the "Calculation of SNAP Overpayment" detailing the SNAP benefits [REDACTED] received from December 23, 2013 to July 31, 2014 and the amount of SNAP benefits she should have received had she reported that her mother had guardianship of her daughter [REDACTED] and that her daughter was living in the State of Massachusetts. (Copy of the notice submitted).
- An Advance Notice of Administrative Disqualification Hearing was mailed to [REDACTED] on 10-14-14 to her address of record, [REDACTED] in North Kingstown, RI [REDACTED]. The Notice advised [REDACTED] that a hearing has been scheduled for 11-19-14 at 10:am at the Department of Human Services Providence Regional Family Center, 206 Elmwood Avenue in Providence, RI to examine the facts of her case. The Notice also notified [REDACTED] that the Department of Human Services has reason to believe that

she intentionally violated a SNAP Program Rule between December 24, 2013 and July 24, 2014 because she was receiving SNAP benefits for a child that was living with her grandmother in the State of Massachusetts. (Copy of the Notice submitted).

- [REDACTED] intentionally and purposely violated a SNAP regulation by receiving SNAP benefits for a child that was not living with her as of October 1, 2013, and should be found guilty of an Intentional Program Violation. It has been proven that [REDACTED] was given Guardianship of [REDACTED] in a court of law on October 1, 2013. The definition of an Intentional Program Violation is any action taken by an individual for the purpose of establishing or maintaining SNAP eligibility or for increasing or preventing a reduction in the allotment amount, which is committed knowingly, willfully, and/or with deceitful intent.
- [REDACTED] fraudulent activity should be considered an Intentional Program Violation, she should be disqualified from participating in the SNAP Program for 12 months, as it will be her first violation, and be required to repay \$984.00 in SNAP benefits she was not entitled to receive had she been truthful on her SNAP Application dated 12-23-2013, the SNAP Interim Report Form dated June 27, 2014 and informed the Department of Human Services that her daughter, [REDACTED] was not living in her home.

FINDINGS OF FACT

1. The Department of Human Services received a copy of the Commonwealth of Massachusetts Probate and Family Court Letters of Appointment verifying that the appellant's grandmother was appointed Guardian of the appellant's daughter on October 1, 2013. The appellant's daughter resided with the appellant's mother per the court order beginning October 1, 2013.
2. The appellant applied for SNAP benefits for herself and her daughter on December 23, 2013. The appellant indicated on the signed application that her daughter lived in her home and that she understood the responsibilities and penalties that the answers on her application were correct and complete.
3. The appellant signed and dated an Interim Report Form dated June 27, 2014 for the continuation of SNAP benefits indicating on the form that her household consisted of herself and her daughter.
4. The appellant did not respond to an agency notice mailed on July 30, 2014 that notified her of the agency calculation of the overpayment of SNAP benefits that her household received from December 24, 2013 through July 24, 2014.
5. The respondent, as an active Food Stamp recipient was aware of the penalty for not complying with Food Stamp rules. The respondent's signature on her Food Stamp application and Interim Report Form also appears immediately below a statement, which, in relevant part reads as follows:

III. FOOD STAMP PENALTY WARNINGS

I understand that:

1. Any member of my household who intentionally breaks a food stamp rule can be barred from the Food Stamp 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.

5. 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 identity or place of residency in order to receive multiple benefits simultaneously under the Food Stamp program would be disqualified for a ten (10) year period.

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

DO NOT trade or sell EBT cards.

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

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

IV. PENALTIES FOR PERJURY

I certify under penalty of perjury 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 attempts to obtain, 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 exceeds the amount previously reported.

Additionally, the DHS-2 informs the applicant/recipient that, "You have a RESPONSIBILITY to supply the Department with accurate information about your income, resources, and living arrangements". You have a RESPONSIBILITY for telling us immediately (within 10 days) of any changes in your income, resources, family composition, or other factors.

There is credible evidence that the appellant fraudulently obtained Food Stamp benefits by misrepresenting the composition of her household during the dates noted above. The appellant therefore made a fraudulent representation with respect to her household composition in order to receive benefits under the Food Stamp program.

CONCLUSIONS

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

1. That the respondent was aware of her rights and responsibilities upon affixing her signature to the DHS-2 Statement of Need Documents, including the responsibility to inform the Department of any changes in circumstance within 10 days of the change.

2. That there is clear and convincing evidence that the respondent did intentionally fraudulently misrepresent herself with respect to her household's composition in order to receive SNAP benefits to which her household was not entitled.
3. That there is clear and convincing evidence that the appellant's household did not consist of 2 eligible members during the period beginning 12-24-2013 through 7-24-2014.
4. That there is clear and convincing evidence the respondent had, in fact, committed an Intentional Program Violation of the Food Stamp Program.

Therefore, this hearing officer finds that the Agency has met its burden of providing clear and convincing evidence that the appellant committed an intentional program violation. As a consequence, the appellant, as head of household, will not be eligible to participate in the Food Stamp Program for one (1) year as it is the appellant's first violation. The Department's Claims, Collections, and Recoveries Unit is charged with the responsibility to secure restitution.

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.



Michael J. Gorman
Administrative Disqualification Hearing Officer

APPENDIX

RESPONSIBILITY OF THE CCR/FRAUD UNIT 1022.25
REV: 07/2002

Upon receipt of an electronic referral of an overpayment of food stamp benefits, the CCR/Fraud Unit representative determines whether the referral is due to agency error, inadvertent household error, or appears to meet the definition of intentional program violation (IPV). As appropriate, prior to any investigation, the Unit verifies that the benefit was used. The amount of the claim is calculated based on the referral. The date that the final determination of the type of error is resolved is known as the discovery date.

Collection action may be postponed on any claim where referral for possible prosecution is being made because collection action will prejudice the case. RESPONSIBILITY OF THE CCR/FRAUD UNIT 1022.25

Collection action on an alleged IPV claim may be handled initially as an inadvertent household error claim based on the amount of, and the circumstances relating to, the claim until a determination of an intentional program violation is made at either an administrative disqualification hearing or, where appropriate, through the court.

Upon receipt of the referral and obtaining other evidence of alleged intentional program violation, the Fraud Manager assigns the case for investigation.

Upon completion of the investigation, from the facts presented and/or obtained, a decision is made to reclassify the claim, recommend the case for disqualification, or refer the case for prosecution through the Attorney General's Office. RESPONSIBILITY OF THE CCR/FRAUD UNIT 1022.25

If disqualification is recommended, an administrative disqualification hearing is initiated by forwarding the recommendation to the Administrative Disqualification Hearing Office for scheduling. (See Section 1034.)

When final disposition of the case is received from the Attorney General's office or the court, the CCR/Fraud Unit sends a copy to the Administrative Disqualification Hearing Office, which in turn informs the agency representative, either through the Regional Manager or Chief Supervisor of such disposition so that appropriate action(s), if indicated, takes place.

ADMINISTRATIVE RESPONSIBILITY 1034.05
REV: 07/2002

The Claims, Collections, and Recoveries/Fraud Unit (CCR/Fraud

Unit) is responsible for investigating any case of alleged intentional program violation and ensuring that appropriate cases are acted upon, either through administrative disqualification hearings or referral to a court of appropriate jurisdiction, in accordance with the procedures outlined in this section. Administrative disqualification procedures or referral for prosecution action must be initiated whenever there is sufficient documentary evidence to substantiate that an individual has intentionally committed one or more acts of intentional program violation as defined in Section 1034.15. If the CCR/Fraud Unit does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional program violation, an inadvertent household error claim is established against the household in ADMINISTRATIVE RESPONSIBILITY 1034.05 accordance with the procedures in Section 1024.

The CCR/Fraud Unit refers the following situations for administrative disqualification hearings:

- * Cases in which the facts do not warrant civil or criminal prosecution through the appropriate court systems;
- * Cases previously referred for prosecution that were declined by the appropriate legal authority; and
- * Cases which were previously referred for prosecution and where no action was taken within a reasonable period of time, and the referral was formally withdrawn by the unit.

The CCR/Fraud Unit must not initiate an administrative disqualification hearing against an accused individual whose case ADMINISTRATIVE RESPONSIBILITY 1034.05 is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related, circumstances.

The CCR/Fraud Unit initiates administrative disqualification procedures or refers a case for prosecution regardless of the current eligibility of the individual.

CRITERIA FOR DETERMINING AN IPV 1034.15
REV: 02/1985

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 or misleading statement, or

misrepresented, concealed or withheld facts; or,

- * Committed any act that constitutes a violation of the Food and Nutrition Act of 2008, as amended, 7 U.S.C. 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.

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.