

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Human Services
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Docket #- 14-1369

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 Ving, Christine Messier, Betty Perez, William O'Donnell and Policy.

Present at the Food Stamp Disqualification Hearing convened on the above cited date were you, your mother and Lisa Ving (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 1034.15 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 EBT 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.

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.

In accordance with Food Stamp regulations the hearing officer is required to carefully consider the evidence and determine if an Intentional Program Violation has 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.

DISCUSSION OF EVIDENCE

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

The agency representative, Lisa Vingj, in her opening statement, stated that [REDACTED] intentionally violated a program rule between 2-3-2014 and 7-31-2014. The appellant fraudulently received SNAP benefits for her Rhode Island household as her son has been in the custody of his father in Massachusetts per the Judgment of Divorce dated March 5, 2013.

The Agency representative testified that:

- The Agency representative stated that this case commenced upon receipt of a PARIS Interstate Match Benefit History Request received by Rachel Flynn, Senior Human Services and Policy Specialist in the Department of Human Services on July 17, 2014. The PARIS match requested information regarding possible duplicate SNAP eligibility in Rhode Island and Massachusetts for [REDACTED] SSN: XXX-XX-[REDACTED] PARIS (Public Assistance Reporting Information System) is an interstate computer match which helps states share information on individuals receiving public assistance.
- This process entails comparing participating state's computer files with one another, using individual's social security numbers to identify improper benefit payments to the same individual in more than one state. The form states that [REDACTED] has been receiving SNAP benefits in the State of Massachusetts since March 14, 2014 and Cash Assistance since February 7, 2014 in the case of his father, [REDACTED] (Copy of the request form submitted).
- On or about July 17, 2014, DHS Fraud Investigator received an electronic mail message from Charles Garivaltis, from the Massachusetts Department of Transitional Assistance Data Matching Unit, stating that child [REDACTED] (SSN:XXX-XX-[REDACTED]) has been active SNAP and Cash Assistance in the State of Massachusetts. Mr. Garivaltis also

stated that [REDACTED] father, provided verification that he has sole custody of [REDACTED]. Mr. Garivaltis provided a copy of the Custody Order/Judgment of Divorce dated March 4, 2013 with his electronic mail message. The order clearly states on page 3 that the father, [REDACTED] shall have sole legal and physical custody of the minor child, said child meaning [REDACTED] (Copy of the Custody Order and electronic mail message submitted).

- On or about February 3, 2014 [REDACTED] completed a SNAP application requesting SNAP benefits for herself and her child, [REDACTED] Jovanna Edwards, Department of Human Services Eligibility Technician, reviewed the SNAP Application with Ms. [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 son [REDACTED]. Ms. [REDACTED] circled YES to the question "Applying for benefits" next to [REDACTED] name.
- Ms. [REDACTED] signed and dated the SNAP application on Page 13, "certifying under penalty of perjury that I have read (or have 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." (Copy of the SNAP application along with DHS Eligibility Technician Jovanna Edward's case log dated February 3, 2014 submitted).
- On or about August 28, 2014 DHS Fraud Investigator Lisa Vingi received from Vilma DiOrio from the Rhode Island Department of Education, verification that child [REDACTED] DOB: [REDACTED] 2004, could not be located in the Rhode Island Department of Education System. (Copy of the electronic mail message submitted).
- On or about September 12, 2014 DHS Fraud Investigator Lisa Vingi received verification from the Woonsocket School Department stating that child [REDACTED] DOB: [REDACTED] 2004, was not registered with the Woonsocket School System for school year 2013-2014 or 2014 -2015. This school system would have been the school system [REDACTED] [REDACTED] would have attended as his mother, [REDACTED] was a resident of Woonsocket. (Copy of the Woonsocket School System verification submitted).
- A SNAP notice was mailed to [REDACTED] to her address of record on August 6, 2014. Her address of record is [REDACTED] Woonsocket RI [REDACTED]. The Notice was sent First Class Mail by the United States Postal Service. The Notice was returned to the agency as "undeliverable" on August 14, 2014. Phone contact was made with [REDACTED] by this investigator at [REDACTED]. [REDACTED] stated that she has moved to [REDACTED] in Woonsocket, RI [REDACTED]. The SNAP Notice was mailed out again on August 14, 2014 to [REDACTED] new address.
- The SNAP notice included the "calculation of SNAP overpayment" sheet detailing the reason for the over issuance, which is [REDACTED] has been in the custody of his father, [REDACTED] per the Judgment of Divorce dated March 5, 2013, and living in the State of Massachusetts."
- The Calculation Sheet detailed the amount of SNAP benefits [REDACTED] received from February 11, 2014 through July 31, 2014 and the amount of SNAP benefits she should have received had she reported that her son, [REDACTED] was not living with her in the State of Rhode Island; that he was actually living in the State of Massachusetts with his father, [REDACTED] (Copy of the SNAP notice submitted).
- An Advance Notice of Administrative Disqualification Hearing was mailed to [REDACTED] on October 14, 2014 to her address of record on [REDACTED] in Woonsocket, RI. The Notice advised [REDACTED] that a hearing has been scheduled for November 19, 2014 at 9:00AM 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 DHS has reason to believe that she intentionally violated a SNAP Program Rule during February 3, 2014 through July 31, 2014 because she received SNAP benefits for a child that was not living with her in Rhode Island. The notice further stated that the amount of SNAP over issuance is \$948.00 (Copy of the Notice submitted.)

- [REDACTED] intentionally and purposely violated SNAP Regulations by obtaining SNAP benefits for a child that was not living with her in her home, as she reported on her SNAP application dated February 3, 2014 and should be found guilty of an Intentional Program Violation. It has been proven that her child, [REDACTED] had been living with his father, [REDACTED] in the State of Massachusetts per the Judgment of Divorce dated March 25, 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 activities should be considered an Intentional Program Violation, disqualifying her from participating in the SNAP Program for a period of twelve (12) months, as it will be her first violation, and be required to repay \$948.00 in SNAP benefits she was not entitled to receive had she been truthful on her Statement of Need Application dated February 3, 2014 and informed the Department of Human Services that her son, [REDACTED] had been in the custody of his father, [REDACTED] in the State of Massachusetts since at least March 5, 2014.

The appellant testified that:

- She stated that when she thinks of the word reside she thinks of a home and where someone lives. She maybe mistakenly thought that because her son has his own room in her home, his own place at the dinner table and his own toys at her home that he resides with her.
- She stated that her son stays with her every other weekend and sometimes more than that depending on his activities. He stays with her during school vacations, and most of the summer.
- She stated that when he stays with her it is her responsibility to provide him with food. She considers him living with her during those times and she was not trying to hurt anyone intentionally. She misinterpreted the question about who is living in her household.
- She stated that the custody status from her divorce has not changed since it took effect during March 2013. She stated that when she has a career job she eventually wants to have joint custody.
- She stated that her son is doing well in his current school and she does not want him to be in Woonsocket schools at this time.

The appellant's mother testified that:

- In a situation like this where her grandson spends weekends and vacations with his mother wouldn't that qualify her daughter for SNAP benefits during those times.

FINDINGS OF FACT

1. The Rhode Island Department of Human Services Fraud Unit received a PARIS Interstate Match Benefit History Request on July 17, 2014 from the State of Massachusetts indicating duplicate SNAP eligibility for the appellant's son. The agency determined that the appellant's son was residing with his father in Massachusetts and receiving SNAP benefits as a member of his household since March 14, 2014.
2. The Rhode Island Department of Human Services received an electronic mail message from the Massachusetts Department of Transitional Assistance, Data Matching Unit, indicating that the appellant's son has been active on SNAP and Cash Assistance in the State of Massachusetts. The Data Matching Unit also provided verification that the child's father has sole custody of the appellant's son.
3. The appellant completed and submitted a Rhode Island SNAP Application on February 3, 2014 requesting SNAP benefits for herself and her child. The appellant listed herself and her son as living in her home. The appellant also indicated on the application that she was applying for benefits for herself and her son.
4. The agency determined and submitted verification that the child was not located in the Rhode Island Department of Education System and that he was not registered in the Woonsocket School System for school year 2013-14 or 2014-15.
5. The agency sent the appellant notice of SNAP overpayment on August 14, 2014 that included the calculation of the overpayment. The overpayment was calculated to have occurred from February 11, 2014 through July 31, 2014. The overpayment was determined by calculating the SNAP benefit the appellant should have received had the appellant reported that her son was not living with her in the State of Rhode Island.
6. The appellant, 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 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 obtaining SNAP benefits for a child that was not living with her in her home as she reported on her SNAP application dated February 3, 2014. The appellant therefore made a fraudulent representation with respect to her household composition in order to receive SNAP benefits that her household was not eligible for 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 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 February 3, 2014 through July 31, 2014.

4. That there is clear and convincing evidence the respondent has, 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.

DISQUALIFICATION PENALTIES 1034.10
REV: 06/2013

Disqualification penalties shall be imposed as follows:

1. Any member of a household that violates a SNAP rule can be barred from the Supplemental Nutrition Assistance Program for one year to permanently, fined up to \$250,000, imprisoned up to twenty (20) years or both. S/he may also be subject to prosecution under other applicable Federal and State laws. S/he may also be barred from the SNAP for an additional eighteen (18) months if court ordered. 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 a waiver of right to an administrative disqualification hearing shall be ineligible to participate in the program:

DISQUALIFICATION PENALTIES 1034.10

- * 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 for the second violation, with the exceptions in numbers 2 and 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 residence in order to receive multiple benefits simultaneously under the Supplemental Nutrition Assistance Program shall be ineligible to participate in the program for a ten (10) year period.

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.