

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICES OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE
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August 1, 2014

Docket # 14-701
DOB: 05/19/1974
Date of Hearing: July 10, 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.

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

**R.I. DEPARTMENT OF HUMAN SERVICES (DHS) POLICY MANUAL: SNAP
SECTION 1034 - INTENTIONAL PROGRAM VIOLATIONS**

The facts of your case, applicable 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 (the respondent), and Agency representatives Lisa Vingj, Christine Messier, Nancy Brennan, Cynthia Machado, Betty Perez, and the Food Stamp Corrective Action Unit.

Present at the Administrative 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 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 July 10, 2014 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. In accordance with 7 CFR 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 this hearing. The notice was sent by first class mail to the respondent's mailing address of record and has not been returned.

In accordance with 7 CFR 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 EVIDENCE

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

The Agency representative, in her statement, maintained that the respondent intentionally reported his job income and workers' compensation income incorrectly when he submitted his Recertification Form, re-applying for SNAP benefits in December 2013 and intentionally misrepresented his earned income by submitting not submitting pay stubs and then receiving workers' compensation, reporting neither, thereby causing an over issuance of SNAP benefits for the time period from July 1, 2013 through January 31, 2014 in the amount of \$1,400.00.

The Agency representative submitted into evidence:

- An Electronic Claim referral panel. The panel indicated, "Per QC review, client fraudulent check stubs/verified/IPV overpaid."
- A copy of the respondent's Six Month Interim Report for SNAP date stamped as being received by DHS on July 16, 2013. The Agency representative called attention to page 3 of the Report where the respondent named his employer as "none" and reported monthly gross income was left blank. The Agency representative also called attention to page 7 of the Report where the respondent affixed his signature and date of July 13, 2013.
- A copy of a QC-50 (Quality Control form) dated February 21, 2014, sent by the DHS Quality Control Reviewer to the respondent's employer and returned signed by the employer. The respondent's payroll information, requested by the QC reviewer for pay history for 2013, the time period from June 5, 2013 through August 30, 2013. The document reported a gross pay for June 5, 2013 in the amount of \$420.00; June 19, 2013 in the amount of \$840.00; August 2, 2013 in the amount of \$952.50; August 16, 2013 in the amount of \$1,065.00; and August 30, 2013 in the amount of \$525.00. Also noted on this form was that the reason that respondent was no longer working was due to an injury.
- A copy of a Recertification Form for SNAP dated December 23, 2013 which the respondent signed and dated December 23, 2013, "certifying under penalty of perjury that I have read (or had read to me) and I understand the Notice of Rights and Responsibilities and Penalties that may answers are correct and complete to the best of my knowledge and believe." The respondent "checked off" that he was unemployed, that he was not working part time, that no one in the household receives income from a job, that no one in the household currently receives income from a business or is self-employed, and that no one helped the respondent complete this form.
- A copy of a Claim Detail Payments form from Beacon Mutual insurance Company which lists the date of the respondent's injury (July 31, 2013) and payments that were made to the respondent between September 3, 2013 through February 24, 2014, totaling \$2,499.50
- A copy of an Agency F20 SNAP notice dated April 10, 2013, addressed to the respondent and signed by Agency representative Lisa Vingi, informing the respondent of

the alleged over-issuance of \$1,400.00 in benefits paid to him during the period from July 1, 2013 through January 31, 2014 as a result of fraudulent activity. Included with the notice was an Agency RIFS-121C form-Waiver of Right to Administrative Disqualification Hearing, which indicated that by signing the included Waiver Agreement form, she would be accepting a penalty of one year, as it was a first violation. Also included is an Agency DHS-155 form-Information about Administrative Disqualification Hearings.

- A copy of an Advance Notice of Administrative Disqualification Hearing form dated June 4, 2014, sent to the respondent's address, informing him that the hearing was scheduled for July 10, 2014 at 9:30 am at the DHS Providence Regional Family Center.

The Agency representative testified that the fraud investigation commenced upon receipt of an Electronic Food Stamp Claim Referral in the DHS Fraud Unit. The DHS quality control reviewer requested the respondent's job income from his employer for 2013. The agency also reviewed was the Beacon Mutual Insurance Claim Detail Payments, which reflect payments made by Beacon to the respondent from September 3, 2013 through February 24, 2014. The DHS Six Month Interim Report for SNAP in which the respondent signed and dated July 13, 2013 under "Penalties for Perjury" states that the respondent's employer was "none" while the agency later established that the respondent was employed from June 5, 2013 through August 30, 2013. On the respondent's reply to his Recertification Form for SNAP, in which he signed and dated December 23, 2013, under "Penalties for Perjury", the respondent stated that he was unemployed, that he was not working part time, that no one in the household receives income from a job, that no one in the household currently receives income from a business or is self-employed, and that no one helped the respondent complete this form. The Agency representative contends that the Agency has demonstrated by clear and convincing evidence that the respondent has committed an Intentional Program Violation (IPV) and thereby requests that the respondent be sanctioned from participation in the SNAP program for a period of one year.

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 Six Month Interim Report for SNAP signed and dated July 13, 2013. The respondent's signature appeared immediately below a statement, which in part reads as follows:

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 \$1,000.00, 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 exceed the amount previously reported. I understand that the information I provide on this form may result in a change or termination of my benefits.

On this Six Month Interim Report, the respondent indicates that his employer is "none."

2. That on February 21, 2014, the Quality Control Unit requested pay history for 2013 for the respondent from Wonasquatucket River Watershed. The Quality Control Unit received back that the respondent was employed starting on June 1, 2013 but was currently out injured. The reply also reported a gross pay for June 5, 2013 in the amount of \$420.00; June 19, 2013 in the amount of \$840.00; August 2, 2013 in the amount of \$952.50; August 16, 2013 in the amount of \$1,065.00; and August 30, 2013 in the amount of \$525.00. Also noted on this form was that the reason that respondent was no longer working was due to an injury.
3. The Recertification Form for SNAP that the respondent signed and dated December 23, 2013 directly underneath:

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 \$1,000.00, 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 exceed the amount previously reported. I understand that the information I provide on this form may result in a change or termination of my benefits.

On this Recertification Form date December 23, 2013, the respondent "checked off" that he was unemployed, that he was not working part time, that no one in the household receives income from a job, that no one in the household currently receives income from a business or is self-employed, and that no one helped the respondent complete this form.

4. A Claim Detail Payments form from Beacon Mutual insurance Company which lists the date of the respondent's injury (July 31, 2013) and payments that were made to the respondent between September 3, 2013 through February 24, 2014, totaling \$2,499.50

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 upon affixing his signature to the Six Month Interim Report for SNAP dated July 13, 2013.
2. The respondent was employed and receiving earned income on a weekly basis when he signed the Six Month Interim Report for SNAP dated July 13, 2013.
3. The job income information provided to DHS by Wonasquatucket River Watershed is a true and accurate reflection of the hours worked and gross wages received by the respondent during the time period from July 5, 2013 through August 30, 2013.
4. The workers' compensation payments made to the respondent from Beacon Mutual Insurance indicating that the respondent received compensation from September 3, 2013 in the amount of \$2,499.50

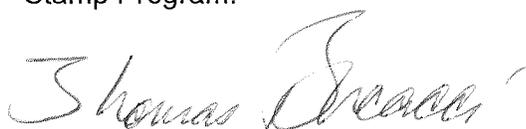
5. The respondent did not accurately report his earned income when answering the question about job income on his Six Month Interim Report for SNAP dated July 13, 2013 or on his Recertification Form for SNAP dated December 23, 2013.
6. The appellant received SNAP benefits during the time period from July 1, 2013 through January 31, 2014, which he was not entitled to receive.
7. There is clear and convincing evidence that the respondent did intentionally misrepresent and make a false statement relative to her earned income to obtain SNAP benefits for which she was not entitled.
8. The Agency has demonstrated by clear and convincing evidence, that the respondent has, in fact, committed an Intentional Program Violation of the Supplemental Nutrition Assistance Program.
9. There is clear and convincing evidence that a SNAP benefit over-issuance did occur from July 1, 2013 through January 31, 2014.

As a consequence, you, as head of household, will not be eligible to participate in the SNAP Program for twelve months 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 program violation: a second would result in a twenty four month disqualification, and a third would result in a permanent sanction from the Food Stamp Program.



Thomas Bucacci
Administrative Disqualification Hearing Officer