

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICES OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE
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Cranston, RI 02920
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Docket # 14-746

DOB: [REDACTED]

Date of Hearing: September 4, 2014

October 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.

**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 Vingi, Christine Messier, Kimberley Johnson, Betty Perez, 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 September 4, 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 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 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 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 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 omitted in her DHS Interim report that two months prior, she had been disqualified from participating in the SNAP Program in Massachusetts, and had been sanctioned for a period of 12 months beginning on February 1, 2014. The omission resulted in an over issuance of \$540 in SNAP benefits for the time period from February 1, 2014 through May 31, 2014.

The Agency representative submitted into evidence:

- An Electronic Claim referral panel received from the SNAP unit for [REDACTED]. The panel indicated a sanction in Massachusetts, effective February 1, 2014, for duplicate benefits-did not report to DHS.
- A copy of a Match Active FS (Food Stamp) Members to the eDRS (electronic Disqualifications Recipient System) fraud report identifying [REDACTED] born [REDACTED] 1991, social security ending in [REDACTED]-as having a disqualification from the SNAP program by the State of Massachusetts (MA) beginning on January 13, 2014.
- A copy of the eDRS, from the Federal Food and Nutrition Services, dated July 14, 2014, and verifying the respondent information and identifying a first disqualification in MA with an onset date of January 13, 2014 for a twelve month sanction.
- A notice of a Massachusetts Disqualification hearing decision dated December 23, 2013 and sent to the respondent to the address of record-[REDACTED] Providence, RI. The decision determined a finding against the respondent for an intentional SNAP violation for non-reporting of receipt of RI and MA SNAP benefits simultaneously, and imposed a one year sanction beginning on January 13, 2014.
- Receipt of an RI SNAP Interim Report signed on February 24, 2014 by the respondent. The Agency representative called attention to page one requesting correction of any information and addition of any new information; and, added that the report noted no mention of the Massachusetts SNAP disqualification effective January 1, 2014.
- A copy of an Agency F20 SNAP notice dated April 24, 2014, addressed and sent to the respondent to her address of record, and not returned as "undeliverable". The notice was signed by Agency representative Lisa Vingi, informing the respondent of the alleged over-issuance of \$540 in benefits paid to her during the period from February 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, she would accept a two year penalty as a result of a second

violation. Also included: a DHS-155 form-Information about Administrative Disqualification Hearings-and, an F-19- summary of SNAP overpayment calculations.

- A copy of an Advance Notice of Administrative Disqualification Hearing letter dated June 4, 2014, sent to the respondent's address of record, informing her that a hearing was scheduled for July 8, 2014 at 9:30 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 second violation.
- A second copy of an Advance Notice of Administrative Disqualification Hearing Reschedule letter dated July 8, 2014, was sent to the respondent indicating a July 29, 2014 9:30am hearing had been scheduled at the DHS Providence Regional Family Center.
- A third copy of an Advance Notice of Administrative Disqualification Hearing Reschedule letter dated July 21, 2014, was sent to the respondent indicating a reschedule date of September 4, 2014, 9:30 hearing scheduled at the DHS Providence Regional Family Center. All three letters included identical information.

The Agency representative testified that the respondent had been sanctioned in Massachusetts for a first time SNAP program violation for receipt of duplicate benefits, as evidenced by an eDRS, and a copy of the Massachusetts Disqualification hearing decision. The one year sanction commenced on January 13, 2014. They further testified that the respondent had purposely withheld this information when submitting her Interim SNAP report in the state of RI on February 24, 2014. As a result of this omission they further testified that the respondent received an over issuance of \$540 in benefits to which she was not entitled for the period from February 1, 2014 through May 31, 2014. The Agency representative requested that the respondent be sanctioned from participation in the Food Stamp Program for a period of two years for this second 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. A Massachusetts Disqualification hearing decision rendered on December 23, 2013 found the respondent did intentionally violate the SNAP regulations and receive benefits to which she was not entitled. This was a result of non-reporting of the receipt of benefits in the states of Massachusetts and RI simultaneously. She was disqualified from the SNAP program for 12 months beginning on January 13, 2014.
2. The Massachusetts decision was sent to the respondent's address of [REDACTED] Providence, RI on or around December 23, 2013.

3. The Massachusetts documents indicated the respondent had received dual benefits from at least July 2012 through January 23, 2013.
4. The respondent submitted by mail, a completed Interim SNAP report form signed on February 24, 2014. 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 \$1000, 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 person 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.

The respondent did not answer all the questions as required, and did not correct any information, or add any new information. The respondent omitted any information related to her former receipt of dual benefits and any information related to her current one year sanction.

CONCLUSION:

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

1. The respondent had been sent the Massachusetts Disqualification decision to her RI address of record following the December 2013 hearing. That decision sanctioned the respondent for a period of twelve months beginning in January 2014.
2. The respondent completed her RI SNAP Interim report on February 24, 2014. She cited the same address used by the Massachusetts DHS, and no documents were returned as undeliverable.
3. When completing the Interim report the respondent omitted information of previous receipt of dual benefits. She omitted information of her recent violation decision; and, she did not reveal her 12 month sanction from the SNAP program.
4. The respondent was aware of the penalty of perjury upon affixing her signature to the SNAP Interim Report on February 24, 2014.

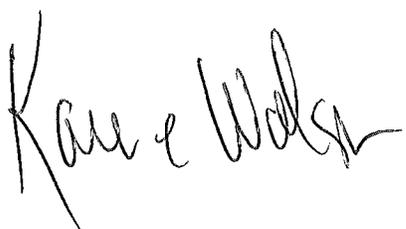
5. There is clear and convincing evidence that the respondent had, in fact, committed an Intentional Violation of the Food Stamp Program.
6. The Agency has demonstrated, by clear and convincing evidence, that the respondent had, in fact, committed and Intentional Program Violation of the Food Stamp Program.
7. There is clear and convincing evidence that a Food Stamp benefit over-issuance did occur from February 1, 2014 through May 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 for two years, per 7 CFR273.16 (b) (1) (ii), 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 twenty-four months upon the second occasion of any intentional Program violation, except as provided in 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 second intentional program violation: a third would result in a permanent sanction from the Food Stamp Program.

A handwritten signature in black ink that reads "Karen E. Walsh". The signature is written in a cursive, flowing style.

Karen E. 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.