

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
EXECUTIVE OFFICES OF HEALTH AND HUMAN SERVICES  
APPEALS OFFICE  
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Docket # 14-747  
DOB: [REDACTED]  
Date of Hearing: July 31, 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 Vingj, Christine Messier, Claudia Isom, Betty Perez, Christine Ruggieri, and the Food Stamp Corrective Action Unit.

Present at the Administrative Disqualification Hearing convened on the above cited date were: you (the respondent), a Spanish interpreter, and 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 7CFR.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 10, 2014 to examine the charge that the respondent had committed an Intentional Program Violation of the Supplemental Nutrition Assistance Program (SNAP) regulations. In accordance with 7CFR273.16(e)(3) and Section1034.25.10 of the DHS Policy manual, the Agency provided at least thirty (30) days advance notice, in writing, of the scheduling of this hearing. The respondent was present at the hearing. The Administrative Disqualification Hearing Officer is 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.

## **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 and purposely withheld the fact that she had been found guilty of an intentional program violation carrying a penalty of a twelve-month disqualification from SNAP benefits which became effective on December 1, 2013 as adjudicated by the Commonwealth of Massachusetts. 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, which is committed knowingly, willfully, and/or with deceitful intent. Subsequent to the penalty being imposed, the respondent submitted an interim report requiring her to answer all questions, correct any errors and add any new information regarding change of circumstances. No changes were reported. The respondent continued to collect SNAP benefits for the period from December 1, 2013 through May 31, 2014 which clearly overlapped the period of time during which she had been sanctioned from the SNAP program as a penalty for the first offense. The representative opined that the omission was intentional, and that it resulted in approval of benefits which she was not eligible to receive. This action would constitute a second violation of program rules, and a penalty of twenty-four months disqualification from SNAP benefits, and repayment of the \$1114 over-issuance was requested.

### **The Agency representative submitted into evidence:**

- A copy of the DHS computer records verifying the respondent's case activity in the state of Rhode Island.
- A copy of a report from the federal internet electronic disqualification recipient system (EDRS) identifying the respondent as an individual that had been disqualified from the SNAP benefits program for twelve months by the Commonwealth of Massachusetts effective December 10, 2013.
- A copy of electronic verification of the respondent's penalty determination for a first offense.
- A copy of the Massachusetts Department of Transitional Assistance Administrative Disqualification hearing decision dated November 6, 2013 finding that there was clear and convincing evidence that the respondent was receiving SNAP benefits simultaneously from two states during the period from October 6, 2012 to January 12, 2013. The penalty for a first offense was disqualification from the SNAP program for twelve months and repayment of \$1400.
- A Rhode Island DHS SNAP Interim Report Form dated March 29, 2014 and signed by the respondent requesting to continue her SNAP benefits in RI, and reporting no changes.

- A copy of an Agency F20 SNAP notice dated April 24, 2014, addressed to the respondent and signed by Agency representative, Lisa Vingi, informing the respondent of the alleged over-issuance of \$1114.00 in benefits paid to her during the period of December 1, 2013 to May 31, 2014.
- A copy of an Agency F19 form (Calculation of SNAP Program Overpayment) dated April 24, 2014, reporting the amount of SNAP benefits received by the respondent during the months from December 2013 through May 2014 as a result of alleged 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 two years, as it was a second violation.
- A copy of an Advance Notice of Administrative Disqualification Hearing form dated June 4, 2014, sent to the respondent's address, informing her that a hearing was scheduled for July 8, 2014 at 9:00 AM at the DHS Providence Regional Family Center.
- An entry of appearance dated July 21, 2014 from Mary Curtin of Rhode Island Legal Services, along with a request to reschedule the hearing after September 8, 2014.
- A copy of and Advance Notice of Administrative Disqualification hearing dated July 8, 2014 scheduling a hearing for July 29, 2014 in error.
- A corrected Advance Notice of Administrative Disqualification Hearing dated July 31, 2014 sent to the respondent' address, informing her that a hearing was scheduled for September 10, 2014 at 9:00 AM at the Providence Regional Family Center.

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 twenty-four months, and be responsible for repayment of the \$1114 over-issuance.

**The respondent chose to testify after being advised of her right to remain silent:**

- She moved to Rhode Island after being "kicked out" of her previous residence.
- She left without many of her belongings including important papers which were thrown away by someone else.
- She does not know how to read or write except for her name.
- She has at times relied on her daughter to tell her when to sign.
- She has signed her name to documents without having knowledge of what they say.

- When she came to apply for food stamps in Rhode Island, she did not know what the status of her case was in Massachusetts.
- She does not recall being notified of action taken in Massachusetts.
- She requested to present a letter from Blackstone Valley Community Health Care (BVCHC).
- The May 1, 2014 letter signed by a social worker confirmed that she had been a behavioral health patient at BVCHC since June 2011.
- She is innocent of what she is being accused of and has to defend herself.
- She does not live in that place (Massachusetts) and has no knowledge of their action.
- She has respect for welfare, and does not feel she knowingly collected benefits she was not entitled to.
- She has not solicited or abused benefits because she does not have access to the card.
- She did receive “papers” and took them to legal aid to request that they defend her.
- She met with someone at legal aid (Rhode Island Legal Services) about representing her at this administrative hearing, but she was declined, as she had signed “the paper”.
- She remembers having to sign a form, but did not know what she was signing, and was not given an explanation of what she was signing.
- She reiterated that she could not read or write.
- She would not deliberately do anything to jeopardize getting the \$189 she is allowed for food stamps.
- She gets \$771 from SSI, and needs the additional money for food.
- When asked if she understood that when signing a document, she is agreeing to what it says even though she may be unable to read it, she did not give a direct response.
- Nobody explained what she signed, but just told her when to sign.
- She thinks that the RI DHS is most concerned about a document she signed in Boston.
- She affirmed that it was her signature that appeared on the RI DHS interim report (exhibit #5).
- She signed it without understanding it and did not ask for help.
- A DHS worker that she met with that day asked her if she lived with another person.

- She explained that she lived with another person naming the same name previously referred to as her daughter, and pays rent with her SSI money.
- She applied for benefits in person.
- She was also awarded welfare benefits.
- She was assisted by interpreters during her visits to the DHS offices.
- She claimed that she lived in Rhode Island since 2011.
- She requested a letter from the person she lives with (naming her daughter) verifying that she pays \$300 per month rent.
- She left there (Massachusetts), and opened a case in RI because she did not think there was any connection between the cases of two different states.
- She never had access to money in the Massachusetts case.
- She is not afraid to explain her actions because she has a clear conscience.

The respondent in this case was clearly challenged by illiteracy, and poor judgment. Consideration was given to the fact that the respondent's ability to be aware of the SNAP rules or penalties may have been limited. As an SSI recipient, she is a disabled individual, although the nature of her exact disability is unknown. There was no outward sign of any physical impairment. She did offer a note from a mental health provider which stated merely that she had been treated by that agency since 2011. That evidence did not establish any specific intellectual deficits. She was unable to verbalize the relevance of that note with regard to the claim of fraudulent activity brought to hearing by the RI agency.

Although she is unable to read or write in either English or Spanish, she acknowledged that she had access to supportive services provided by the agency during appointments with agency eligibility technicians who could explain the forms and rules, and that she was assisted by Spanish interpreters. She also indicated that her daughter sometimes instructed her about what to sign. It does not appear that she was disadvantaged by lack of access to assistance she required to obtain the essential information before signing any forms.

The respondent's testimony was often contradictory and not credible. While she indicated that she had no knowledge of a first offense sanction of SNAP benefits imposed by Massachusetts as a result of a previous administrative disqualification hearing, she later contradicted that statement by saying that she had moved to Rhode Island and applied again because she did not think what happened in MA would impact the RI case. She also stated that she had never actually received any benefits from the MA case, which is untrue, as the Hearing Officer found evidence of a \$1400 overpayment. Additionally, she tried to dismiss responsibility for her actions by explaining that the documents were discarded by another party when she moved.

## FINDINGS OF FACT

After a careful review of the record of hearing, the following findings of fact have been established:

Hearing Officer, David Ly, of the Massachusetts Department of Transitional Assistance conducted an Administrative Disqualification Hearing on November 4, 2013 without the respondent present, finding clear and convincing evidence that the respondent had intentionally violated SNAP program regulations receiving benefits to which she was not entitled from October 6, 2012 to January 12, 2013.

A first offense penalty of a twelve-month disqualification was imposed, and became effective from December 1, 2013 through November 30, 2014.

The respondent applied for SNAP benefits in Rhode Island, and received payments for December 1, 2013 through May 31, 2014.

SNAP benefits were paid in RI during the disqualification period.

The respondent had subsequently submitted a completed SNAP Interim Report (DHS-IR) to the RI DHS which she signed on March 29, 2014. The respondent's signature appeared immediately below a statement, which reads as follows:

*"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 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."*

The respondent did not report that she had been previously sanctioned in Massachusetts.

The over issuance of SNAP benefits for the months of December 2013, January, February, March, April and May 2014 during which she had been disqualified from the program totaled \$1114.00.

The respondent was properly notified of her right to an administrative disqualification hearing to examine the facts of her case.

The agency presented clear and convincing evidence that she had collected SNAP benefits during a period of disqualification.

The respondent had committed a second violation of a program rule which carries a penalty of twenty-four month disqualification from the SNAP program.

**CONCLUSION:**

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

1. The respondent was informed of her responsibilities to report accurate information as instructed on the DHS-IR form, and agreed to those conditions upon affixing her signature to the document on February 26, 2014.
2. The respondent did not report her penalty of a twelve-month disqualification from the SNAP program resulting from a previous hearing held by the Massachusetts Department of Transitional Assistance on November 4, 2013.
3. The respondent's disqualification period for the first offense was December 1, 2013 through November 30, 2014.
4. The respondent accepted SNAP benefits during the months from December 1, 2013 through May 31, 2014 which clearly occurred within the period of her twelve month disqualification.
5. There is clear and convincing evidence that the respondent withheld the information relative to her first intentional program violation, and the resulting period of disqualification.
6. As a result, the Agency has demonstrated that the respondent has committed a second intentional program violation of the Supplemental Nutrition Assistance Program rules.
7. The amount of over-issuance for the period from December 1, 2013 through May 31, 2014 was correctly calculated at \$1114.00.

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



Carol J. Ouellette  
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.