

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICES OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE
57 Howard Avenue-LP Bldg
Cranston, RI 02920
(401) 462-2132 / Fax # (401) 462-0458
TDD # (401) 462-3363**

Docket # 14-815
DOB: 5/17/1980
Date of Hearing: July 9, 2014

August 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, Gina DeGraca, Aline Guertin, Betty Perez, Christine Ruggieri, 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 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 July 9, 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 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 notice was sent by first class mail to the respondent's mailing address of record and has not been returned.

In accordance with 7CFR273.16(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 withheld information regarding the twelve-month disqualification from SNAP benefits beginning on March 1, 2014 that she consented to in the Court of Common Pleas of Berks County Pennsylvania on January 27, 2014. Knowing she had signed the Disqualification Consent Agreement in January 2014, she also submitted an interim report requesting to continue receiving SNAP benefits in Rhode Island after March 1, 2014 which was within her period of disqualification. The only change of circumstances reported to the RI DHS was a reduction of income due to unemployment. The representative opined that the omission was intentional, would constitute a second violation of program rules, and requested a penalty of twenty-four months disqualification from SNAP benefits, and repayment of the \$415 over-issuance.

The Agency representative submitted into evidence:

- A copy of an electronic claim referral identifying a possible intentional program violation relative to the SNAP program based on the information that the client had signed a disqualification consent agreement in a Pennsylvania court on January 27, 2014, accepting a penalty of a twelve month sanction beginning March 1, 2014.
- A copy of electronic verification of the respondent's identity and date of disqualification from SNAP benefits.
- A copy of the Pennsylvania Disqualification Consent Agreement disqualifying participation in the SNAP program for a period of twelve months dated January 27, 2014 and signed by the respondent in a court of law.
- A Notice of Disqualification dated February 7, 2014 and sent to the respondent by the office of Inspector General of the Commonwealth of Pennsylvania documenting that she had been disqualified from receiving SNAP benefits for a period of twelve months effective March 1, 2014.
- A copy of an electronic disqualification verification from the Federal Nutrition Service (FNS) dated May 7, 2014.
- A Rhode Island DHS SNAP Interim Report Form dated February 26, 2014 and signed by the respondent requesting to continue her SNAP benefits in RI, and reporting only one change of circumstances at question #5 (Income) where her gross income was changed to \$0.00.
- A copy of an Agency F19 form-Calculation of SNAP Program Overpayment dated May 7, 2014, reporting the amount of SNAP benefits received by the respondent in the months of March 2014 through May 2014, the amount of SNAP overpayment that occurred in each of those months, and the total SNAP overpayment of \$415.00.

- A copy of an Agency F20 SNAP notice dated May 7, 2014, addressed to the respondent and signed by Agency representative, Lisa Vingi, informing the respondent of the alleged over-issuance of \$415 in benefits paid to her during the period from March 1, 2014 through May 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 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 the hearing was scheduled for June 18, 2014 at 9:00 AM at the DHS Providence Regional Family Center.

The Agency representative summarized that due to the sequence of events:

1. January 27, 2014, the respondent signed a Disqualification Consent Agreement in a Pennsylvania court of law admitting to an intentional program violation, and accepting first offense penalty of a twelve month disqualification from receiving SNAP benefits beginning on March 1, 2014.
2. February 7, 2014, a Notice of Disqualification was sent to the respondent by the Inspector General of the Commonwealth of Pennsylvania affirming the disqualification date of March 1, 2014.
3. February 26, 2014, the respondent submitted an Interim report form to the Rhode Island Department of Human Services requesting to continue SNAP benefits beginning on March 1, 2014.

the respondent intentionally omitted the disqualification information of which she was fully aware when she submitted a request to RI DHS for SNAP benefits within the period of her twelve month disqualification (March 1, 2014 and February 28, 2015). The Agency further testified that based on the information provided by the respondent on and with her SNAP interim report, she was approved for continuation of SNAP benefits which she was not eligible to receive, resulting in an over issuance of benefits for the time period from March 1, 2014 through May 31, 2014 totaling \$415.00. 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 two years.

FINDINGS OF FACT

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

The respondent had signed a Disqualification Consent Agreement in a Pennsylvania court of law admitting to an intentional program violation, and accepting first offense penalty of a twelve month disqualification from receiving SNAP benefits beginning on March 1, 2014.

A Notice of Disqualification had been sent to the respondent by the Inspector General of the Commonwealth of Pennsylvania on February 7, 2014 affirming the disqualification date of March 1, 2014.

The respondent had subsequently submitted a completed SNAP Interim Report (DHS-IR) to the RI DHS which she signed on February 26, 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 over issuance for the months of March, April, and May 2014 totaled \$415.00.

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

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 her responsibilities to report accurate information upon affixing her signature to the DHS-IR form on February 26, 2014.
2. The respondent did not report her voluntary disqualification from the SNAP program on February 26, 2014, although she had signed a consent agreement on January 27, 2014.
3. The respondent was notified in writing of the disqualification start date of March 1, 2014.
4. The respondent accepted SNAP benefits during the months from March 1, 2014 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 did intentionally withhold the information relative to her first intentional program violation, and the resulting period of disqualification.
6. As a result, the Agency has demonstrated by clear and convincing evidence, that the respondent has, in fact, committed a second Intentional Program Violation of the Supplemental Nutrition Assistance Program.
7. The amount of over-issuance for the period from March 1, 2014 through May 31, 2014 was correctly calculated at \$415.00.

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