

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

Docket # 14-816
DOB: 03/24/1978
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 Vingi, 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 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 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 that her son had been living with her when she applied for SNAP benefits in May 8, 2012 and intentionally misrepresented that, thereby causing an over issuance of SNAP benefits for the time period from November 17, 2011 through December 31, 2013 in the amount of \$2,681.00.

The Agency representative submitted into evidence:

- A telephone complain was received by the DHS Fraud Unit on November 20, 2013, stating that the respondent's son, with DOB of 8-7-1993, had been living with his grandmother for the past two years in New York.
- A copy of the respondent's lease with the Providence Housing Authority dated November 17, 2011 stating that the respondent's son with DOB 3-24-1993 no longer lives with the respondent at 42 Imera Avenue, Providence, RI; he now lives in New York, NY.
- A copy of the respondent's Six Month Interim Report for SNAP that had issued on February 18, 2012 and that she returned, signed and dated February 27, 2012. The respondent indicated by "checking" the box that no charges as to the six children living with her, including her child with DOB 8-7-1993 and that rent is subsidized and the amount is changed from \$121.00 per month to \$109.00 per month. Again, this Six Month Interim Report was signed and dated by the respondent under the paragraph titled, "Penalties for Perjury". The respondent was then approved for continued benefits based on inform that she provided.
- A copy of an in-office interview for the respondent's SNAP application (SNAP-APP2) dated by the Agency worker on the date of the interview on May 8, 2012 as being received by DHS on May 29, 2013 which the respondent lists the six children who lives with her, she includes her son with DOB 8-7-93 (page 4 on the application). Also, the respondent list two other sons that are in the household and that are at least 16 years old and in high school (page 7 on the application). Again, this application for SNAP was signed and dated by the respondent on page 27 which lists "SNAP Penalty Warnings" and "Penalties for Perjury".
- A copy of the Six Month Interim Report that issued August 21, 2012 that shows that the respondent answered question # 3 on page 2 "Who lives in your home?" and the respondent lists all six children, including the child with DOB 8-7-93. The respondent "checked off" the box indicating no charges to the members in her household. The respondent signed and dated this Interim Report 9-11-12 beneath the paragraph "Penalties for Perjury" (page 7). The respondent was then approved for continued benefits based on inform that she provided.
- A copy of an in-office interview where the respondent completes a "Statement of Need (DHS-2) application requesting cash assistance benefits for herself and five children.

The respondent signed and dated the application 9-11-12 underneath the "SNAP Penalty Warnings" and "Penalties for Perjury" sections. The child with the DOB 8-7-93 was removed from the household in this application. The respondent did not report that this child left the household on the SNAP Interim Report form that had been filed on the same day.

- A copy of an Eligibility Technician's (ET) case log (CLOG) dated December 10, 2012, which documented that the respondent came into the DHS Office to report that her 19 year old son is back in the household.
- A copy of the Six Month Interim Report for SNAP that the agency issued on January 20, 2013. This report lists six children that live with the respondent and she indicated that no changes need to be made to this list; this list includes the respondent's child with DOB 8-7-93. The respondent signed this report under the paragraph titled "Penalties for Perjury".
- A copy of a Statement of Need (DHS-2) Application for Cash Assistance benefits that the respondent completed. Question #1, the respondent listed six children that live with her, including the child with DOB 8-7-93. On page 27 of this application, the respondent signed her name and dated it March 11, 2013 beneath the "SNAP Penalty Warnings" and "Penalty for Perjury" paragraphs.
- A copy of the Six Month Interim Report for SNAP that the agency issued on July 20, 2013 to the respondent. The report lists six children living with the respondent and the respondent indicated that no changes need to be made to this list. This list includes the child with DOB 8-7-93. The respondent signed and dated this report 8-21-13 beneath the paragraph titled "Penalties for Perjury".
- A copy of a letter that had issued to the Providence School System requesting verification that the six children listed on the respondent's reports and applications were enrolled in the Providence School System. The school department's reply indicated that the child with DOB 8-7-93 was never in the system; child with DOB 5-12-96 was enrolled at Mt. Pleasant but never showed, inactive; child with DOB 6-23-98 not active since 6-21-13; child with DOB 6-28-99 withdrew 6-21-13, possibly to NY; child with DOB 6-8-03 was at Pleasantview School but with withdrew 12-20-13 to NY; and child with DOB 4-13-07 was at Veasie Street School but withdrew 6-21-13 to NY.
- A copy of a letter from the NY State Office of Temporary and Disability Assistance Division of Employment in response to the agency's inquiry as to information regarding the respondent and her son with DOB 8-7-93. The NY State of Welfare Management System's records show that the respondent has an active SNAP case, with an address of 109 East 130th Street, NY, NY 10037; records also show that the respondent's son with DOB 8-7-93 is active on SNAP too.

Agency requested that record be held open in order to obtain verification from the Providence Housing Authority that the child with DOB 8-7-93 was not added back to the lease in December of 2012.

The Agency representative testified that the fraud investigation commenced subsequent to a telephone complaint received by the Department of Human Services – Fraud Unit on November 20, 2013. The telephone complaint stated that the respondent's child with DOB 8-7-93 and who was listed as living with the respondent was actually living in NY with his grandmother for the previous two years. The DHS – Fraud Investigator reviewed the respondent's reports and applications that the respondent has signed and dated for the time period November 17, 2011 through December 31, 2013. The Agency further testifies that based on the information provided by the respondent on and with her SNAP applications and Six Month Interim Reports, she was approved for SNAP benefits which she was not eligible to receive, resulting in an over issuance of benefits for the time period from November 1, 2011 to December 31, 2013 totaling \$2,681.00. 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 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 during an in-office interview, a completed SNAP application (SNAP-APP2) signed on May 8, 2012. The respondent's signature appeared immediately below a statement, which in part reads as follows:

DECLARATION OF APPLICANT/RECIPIENT SNAP PENALTY WARNINGS-
I understand that:

1. Any member of my household who intentionally breaks a food stamp rule can be barred from the Supplemental Nutrition Assistance 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.*

2. Individuals found by a Federal, State, or local court to have used or received SNAP benefits in a transaction involving the sale of firearms, ammunitions or explosives shall be permanently ineligible for the Supplemental Nutrition Assistance program upon the first occasion of such violation.

3. Individuals convicted of trafficking food stamp benefits of five hundred dollars (\$500) or more shall be permanently disqualified from the Supplemental Nutrition Assistance program.

4. 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 benefits simultaneously under the Supplemental Nutrition Assistance Program would be disqualified for a ten (10) year period.

DO NOT give false information or hide information to get or continue to get SNAP benefits.

DO NOT trade or sell EBT cards.

DO NOT use SNAP benefits to buy ineligible items, such as alcoholic drinks and tobacco.

DO NOT use someone else's EBT card for your household.

****Signature Required****

By signing this application, I certify under penalty of perjury that I have read (or have had read to me) and understand the Notice of Rights, Responsibilities, and Penalties, and 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.

Additionally, the SNAP-APP2 informs the applicant/recipient that

"You have a RESPONSIBILITY to supply the Department with accurate information and provide proof about your income, resources, and living arrangements".

You have a RESPONSIBILITY to tell us immediately (within ten (10) days) of any changes in your income, resources, family composition, or any other changes that affect your household. For SNAP, if you are a simplified reporter, you must report when your income exceeds 130% of the Federal Poverty Level.

2. The SNAP-APP2 signed by the respondent on May 8, 2012, at Question #1 requested the names of everyone in the household. The document showed that the respondent answered that her son with DOB 8-7-93 was living with her as part of the household. Also, the respondent listed two other sons that are in the household and that are at least 16 years old and in high school.
3. The respondent signed her Six Month Interim Report on September 11, 2012. The respondent answered question #3 "Who lives in your home?" which lists six children including the respondent's son with DOB 8-7-93 and the respondent check-off "no changes".

4. The Statement of Need (DHS-2) application requesting cash assistance benefits for herself and five children was signed by the respondent and dated September 11, 2012. The child with the DOB of 8-7-93 was removed from the household in this application but the respondent did not report that this child left the household on the SNAP Interim Report form that had been filed on the same day.
5. An Eligibility Technician's case log note dated December 10, 2012 stating that the respondent came into the DHS Office to report that her 19 year old son is back in the household.
6. The respondent signed her Six Month Interim Report that issued on January 20, 2013. The respondent answered question #3 "Who lives in your home?" which lists six children including the respondent's son with DOB 8-7-93 and the respondent check-off "no changes".
7. The Statement of Need (DHS-2) application requesting cash assistance benefits for herself and six children was signed by the respondent and dated March 11, 2013. The six children listed included the child with DOB 8-7-93.
8. The respondent signed her Six Month Interim Report on July 20, 2013. The respondent answered question #3 "Who lives in your home?" which lists six children including the respondent's son with DOB 8-7-93 and the respondent check-off "no changes".
9. The Providence School Department provided information stating: the child with DOB 8-7-93 was never in the system; child with DOB 5-12-96 was enrolled at Mt. Pleasant but never showed, inactive; child with DOB 6-23-98 not active since 6-21-13; child with DOB 6-28-99 withdrew 6-21-13, possibly to NY; child with DOB 6-8-03 was at Pleasantview School but with withdrew 12-20-13 to NY; and child with DOB 4-13-07 was at Veasie Street School but withdrew 6-21-13 to NY.
10. The NY State Office of Temporary and Disability Assistance Division of Employment, Welfare Management System replied to the agency's Fraud Unit that they have record of the respondent and her son with DOB 8-7-93 being active on SNAP in the State of NY.
11. The Providence Housing Authority submitted a letter stating that the respondent recertified on 9-13-12 and 9-24-13 listing her family members but not her child with DOB 8-7-93 was included. The respondent had not requested to add him back on as a family member prior to her termination for the Housing Voucher Program.

CONCLUSION:

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

1. The respondent did not accurately answer question # 1 of her SNAP-APP2 as part of her in-office interview that she signed and dated May 8, 2012. Question #1 asks for everyone who is living in the respondent's home to be listed, the respondent included in the list her son who's DOB is 8-7-93.
2. The respondent had knowledge of the penalties for false, misleading statements or misrepresentations due to signing and dating her May 8 2012 application underneath the "SNAP Penalty Warnings" and "Penalties for Perjury" paragraphs.
3. The Providence School System has no record of the respondent's child with DOB 8-7-93 ever being enrolled with the school department and the Providence Housing Authority has indicated that the respondent had her lease recertified September 13, 2012 and September 24, 2013, which did not include the respondent's child with DOB 8-7-93 as someone living with her.
4. The respondent did not accurately answer question # 3 of her Six Month Interim Report that she signed on September 11, 2012. Question # 3 asks "Who lives in your home?", and six children are listed, including the respondent's child with DOB 8-7-93.
5. The respondent had knowledge of the penalties for false, misleading statements or misrepresentations due to signing and dating her September 11, 2012 Six Month Interim Report underneath the "Penalties for Perjury" paragraph.
6. The Providence School System has no record of the respondent's child with DOB 8-7-93 ever being enrolled with the school department and the Providence Housing Authority has indicated that the respondent had her lease recertified September 13, 2012 and September 24, 2013, which did not include the respondent's child with DOB 8-7-93 as someone living with her.
7. The Providence School System has no record of the respondent's child with DOB 8-7-93 ever being enrolled with the school department and the Providence Housing Authority has indicated that the respondent had her lease recertified September 13, 2012 and September 24, 2013, which did not include the respondent's child with DOB 8-7-93 as someone living with her.
8. Although the respondent only list five children on her Statement of Need Application (DHS-2) for cash assistance benefits, excluding the child with DOB 8-7-93, the respondent failed to note the same on her Six Month Interim Report for SNAP that she filed on the same day. (see above, #4)
9. The respondent did not accurately answer question # 3 of her Six Month Interim Report that she signed and dated on July 20, 2013. Question # 3 asks "Who lives in your home?", and six children are listed, including the respondent's child with DOB 8-7-93. The Providence School System has no record of the respondent's child with DOB 8-7-93 ever being enrolled with the school department; the Providence Housing Authority has indicated that the respondent had her lease recertified September 13, 2012 and September 24, 2013 and her child with DOB 8-7-93 was not included as someone living with her; and the State of NY – Welfare Management System has record of the respondent and her son with DOB 8-7-93 as being active on SNAP in the State of NY.

10. The appellant received SNAP benefits during the time period from November 1, 2011 through December 31, 2013, which she was not entitled to receive.
11. There is clear and convincing evidence that the respondent did intentionally misrepresent and make a false statement relative to the number of household members in her home to obtain SNAP benefits for which she was not entitled.
12. 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.
13. There is clear and convincing evidence that a SNAP benefit over-issuance did occur from November 1, 2011 through December 31, 2013.

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