

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICES OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE
57 Howard Avenue-LP Bldg
Cranston, RI 02920
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Docket # 14-901

DOB: [REDACTED]

November 3, 2014

Date of Hearing: October 20, 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 October 20, 2014 to examine the charge that the respondent had committed an Intentional Program Violation of the Supplemental Nutrition Assistance Program (SNAP) regulations. This hearing had been completed on September 4, 2014. However, due to a recorder malfunction, the hearing was reheard on this date, October 20, 2014. The respondent failed to appear at both scheduled hearings. 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 SNAP application, and in subsequent SNAP interim and SNAP recertification reports, that her husband was living in the home with her and was receiving income. This omission resulted in an over issuance of \$1421.00 in SNAP benefits for the time period from February 5, 2013 through May 31, 2014.

The Agency representative submitted into evidence:

- A letter from the respondent's landlady and representative, dated April 23, 2014. The letter identified that the respondent and her husband lived together as tenants in her Warwick apartment from February 1, 2013 until April 23, 2014, when the court ordered eviction for nonpayment of rent. The letter identified that the parties would be willing to testify to the facts.
- Included with the letter-a lease agreement between the respondent and her husband (tenants) and the landlady signed on February 1, 2013; and a copy of RI District Court Civil Face Sheet dated April 23, 2014. The judgment for trespass and ejection against the respondent and her husband included a finding for damages as well.
- Signed witness statements from both the landlord and her representative obtained by the Fraud Investigator in person, on July 28, 2014.
- A copy of a SNAP application signed on February 5, 2013 by the respondent. The Agency representative called attention to page three requesting the name of all household members; and, upon which, the Agency noted that the respondent did not report her spouse as part of her household. They noted no mention of her husband's income.
- A Case Log (CLOG) dated February 6, 2013 noting a phone interview between DHS and the respondent, in which she indicated a household size of one, and identified that she had left her husband on December 17th (2013). The Agency noted the failure of the respondent to report her husband's income.
- A copy of a License and Certificate of Marriage documenting the marriage of the respondent and her husband on July 16, 2001.

- Receipt of a six month signed SNAP interim report received by the Agency on July 10, 2013. The Agency representative noted the failure of the respondent to identify any changes as requested, or to mention her husband as a household member.
- A copy of a SNAP recertification (SNAP-2) form signed by the respondent and received by DHS on January 7, 2014. The Agency noted the failure of the respondent to include her husband as a household member.
- A CLOG dated December 17, 2013 documenting a phone interview conducted between the DHS worker and the respondent. The worker noted a household consisting of one as reported by the respondent.
- A copy of a Social Security benefits View Summary panel which identified the respondent's husbands' benefits history from March 10, 2007 through July 22, 2014. The panel indicated monthly benefits of \$686.00 as of May 2014.
- A copy of an Agency F20 SNAP notice dated May 8, 2014 addressed and sent to the respondent to her address of record. The notice was signed by Agency Representative Teresa Bakr informing the respondent of the alleged over-issuance of \$1421.00 in benefits paid to her during the period from February 2013 through May 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 one year penalty as a result of a first violation. Also included: a DHS-155 form-Information about Administrative Disqualification Hearings-and, an F-19-summary of SNAP overpayment calculations. There was no response to this letter.
- A copy of a duplicate Agency F20 SNAP notice dated May 22, 2014 mailed to the address of record via the United States Postal Service. The packet was returned as "Return to sender, not deliverable as addressed, unable to forward." The Agency testified that a second identical packet dated May 22, 2014 was also sent to the address of [REDACTED] Cranston, RI 02910, an address provided by the former landlord. This packet was not returned via mail.
- A copy of an Advance Notice of Administrative Disqualification Hearing letter dated June 8, 2014, sent to the respondent's initial address of record, informing her that a hearing was scheduled for July 29, 2014 at 10 am at the DHS Providence Regional Family Center.
- A second Advance Notice of Administrative Disqualification Hearing letter dated July 22, 2014, sent to the new address of record [REDACTED] Cranston, RI-informing the respondent of a Rescheduled hearing date of September 4, 2014 at 9:00am 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 first violation.
- A third copy of an Advance Notice of Administrative Disqualification Hearing Reschedule letter dated September 19, 2014 was sent to the respondent at her [REDACTED] street address, indicating a reschedule date of September October 20, 2014 hearing

scheduled at the DHS Providence Regional Family Center. All three letters included identical information.

The Agency representative testified that the respondent had purposefully omitted her husband's financial information, and had omitted to identify him as a household member when filling out SNAP applications. They further testified that the respondent's husband had been receiving Social Security income. As a result of her omission, the respondent received an over issuance of \$1421.00 from February 5, 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 one year for this first 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 DHS CLOG dated February 6, 2013 identified that the respondent had informed DHS via telephone that she had left her husband on December 17, (2013) and that her household size was one.
2. The respondent's former landlady and her representative identified through a letter dated April 23, 2014 that the respondent and her husband had been living together as tenants in her apartment from February 1, 2013 through April 23, 2014. The landlady included a lease dated February 1, 2013 signed by both the respondent and her husband.
3. A Civil Court Judgment dated April 23, 2014 indicated a judgment against the respondent and her husband for Trespass and Ejectment, and assessed the couple for damages.
4. The respondent submitted by mail-a SNAP application dated February 5, 2013, a subsequent SNAP Interim Report Form dated July 6, 2014, and a SNAP Recertification Form dated December 20, 2013. On each form 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 omitted any information related to her husband's occupancy in the household, and omitted to account for his RSDI income.

CONCLUSION:

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

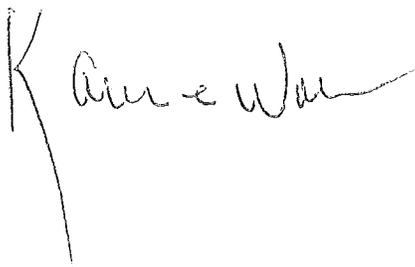
1. On February 1, 2013, both the respondent and her husband signed a residential lease for a rental apartment.
2. On February 5, 2013, and on December 20, 2013, and on July 6, 2013 the respondent completed SNAP forms on which she omitted her husband and his income when identifying her SNAP household. Her husband received monthly benefits at that time, as established by a Social Security history panel.
3. On February 6, 2013 the respondent informed DHS that her husband had left her on December 17th, and that she was a household of one.
4. On April 23, 2014 the appellant and her husband were evicted from their domicile as evidenced by a copy of a RI Civil Court Face sheet.
5. A letter dated April 23, 2014 was received from the former landlady and her representative indicating that her former tenants (the respondent and husband) had been living at her apartment since February 1, 2013, and that they had been evicted by court order on April 23, 2014.
6. The respondent was aware of the penalty of perjury upon affixing her signature to the SNAP Reports on three separate occasions.
7. There is clear and convincing evidence that the respondent had, in fact, committed an Intentional Violation of the Food Stamp Program.
8. 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.
9. There is clear and convincing evidence that a Food Stamp benefit over-issuance did occur from February 1, 2013 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 one year, 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 violation; a second would result in a period of ineligibility for twenty four months from the Food Stamp Program.

A handwritten signature in cursive script that reads "Karen E. Walsh". The signature is written in black ink and is positioned above the typed name of the signatory.

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.