

v.

APPELLANT

\* BEFORE JENNIFER L. GRESOCK,  
 \* AN ADMINISTRATIVE LAW JUDGE  
 \* OF THE MARYLAND OFFICE  
 \* OF ADMINISTRATIVE HEARINGS  
 \* OAH No.: DHS- [REDACTED] -03-18-27860

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### DECISION

STATEMENT OF THE CASE  
 ISSUES  
 SUMMARY OF THE EVIDENCE  
 FINDINGS OF FACT  
 DISCUSSION  
 CONCLUSIONS OF LAW  
 ORDER

### STATEMENT OF THE CASE

On August 3, 2018, the [REDACTED] (local department), on behalf of the Department of Human Services (DHS), Office of the Inspector General (OIG), notified the Appellant<sup>1</sup> that it believed the Appellant had committed an Intentional Program Violation (IPV) of the Food Supplement Program (FSP) and that it was referring the matter to the Office of Administrative Hearings (OAH) for an Administrative Disqualification Hearing (ADH). 7 C.F.R. § 273.16(e)(3) (2018).<sup>2</sup> The local department further informed the Appellant that the Appellant could waive her right to an ADH and accept a disqualification from the FSP. *Id.* § 273.16(f). The Appellant did not waive her right to an

<sup>1</sup> "Appellant" means an applicant, recipient, or other individual who is, among other things, the subject of an Intentional Program Violation proceeding. Code of Maryland Regulations (COMAR) 07.01.04.02B(3)(b).

<sup>2</sup> The federal regulations that apply to the FSP are found in Title 7 of the Code of Federal Regulations (C.F.R.). Unless otherwise noted, all citations herein to the C.F.R. are to the 2018 volume.

ADH. Accordingly, on August 22, 2018, the local department referred the matter to the OAH for a hearing.

On September 5, 2018, the OAH mailed a Notice of Hearing to the Appellant at the Appellant's address of record, which advised the Appellant that an ADH would be held on September 26, 2018, at the local department's office at [REDACTED] Maryland. On September 26, 2018, I held a hearing as scheduled. *Id.* § 273.16(e); *see also* COMAR 07.01.04.21B. [REDACTED] Appeals and Overpayment Representative, represented the local department. The Appellant did not appear for the hearing.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DHS, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); 7 C.F.R. § 273.16(e); COMAR 07.01.04; and COMAR 28.02.01.

### ISSUES

1. Did the Appellant commit an IPV of the FSP?
2. If so, what sanction is warranted?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits offered by the local department:

- LD Ex. 1 - 88-page Referral Packet and Summary of Evidence, August 22, 2018, with the following attachments:
- Advance Notice of Administrative Disqualification Hearing, dated August 3, 2018 (pp. 1 – 5)
  - Waiver of Administrative Disqualification Hearing, August 3, 2018 (pp. 6 – 10)
  - OIG Report of Findings, undated, but with multiple date stamps in July 2018 (pp. 11 – 14)
  - FSP Applications;<sup>3</sup> Interview Guide, dated August 14, 2017 (pp. 15 – 32)

<sup>3</sup> Some of these pages are illegible or virtually illegible, including pages 16 through 24.

- FSP approval notice, dated January 25, 2017 (pp. 33 – 38)
- FSP closing notice, sent to [REDACTED] dated June 30, 2017 (pp. 39 – 42)
- Returned mail, FSP closing notice, dated June 30, 2017 (pp. 43 – 45)
- Maryland Judiciary Case Search Records, printed November 30, 2017; Email, dated June 19, 2018; Motor Vehicle Administration (MVA) Driving Record Information, dated November 30, 2017 (pp. 46 – 50)
- [REDACTED]<sup>4</sup> undated (pp. 51 – 53)
- Database printouts, printed July 30, 2018 and December 1, 2017 – Household Addresses, Wage History Inquiry, Employer Inquiry, General Information, Social Security Information, Supplemental Security Information, MD State Data Exchange, Verification of Social Services (pp. 54 – 74)
- Code of Maryland Regulations Excerpts, printed July 30, 2018 (pp. 75 – 85)
- Client's Automated Resources and Eligibility System (CARES) Narration, dated August 14, 2017 through July 24, 2018 (pp. 86 – 88)

LD Ex. 2 - Investigative Report with nine numbered exhibits, listed below<sup>5</sup>:

- CARES Narration, dated December 14, 2016 through March 29, 2018, with Client Participation History, printed June 4, 2018
- January 25, 2017 and August 7, 2017 FSP Applications
- Maryland Judiciary Case Search Records, printed November 30, 2017
- Verification of Social Services via [REDACTED] as of January 27, 2017
- MVA Driving Record, dated November 30, 2017
- Database printouts, printed December 1, 2017 – Social Security Information, Supplemental Security Information, MD State Data Exchange
- Verification of Social Services via [REDACTED] as of November 3, 2017
- Letter from [REDACTED] Investigator, to the Appellant, undated
- Email, dated June 19, 2018

The Appellant did not appear, and therefore did not offer any exhibits for admission into evidence.

<sup>4</sup> This acronym was not defined at the hearing.

<sup>5</sup> I did not retain the premarked exhibit numbers to avoid confusion. In addition, the local department did not number the pages of this exhibit. Some of the documents in LD Ex. 2 are duplicates of documents in LD Ex. 1; however, I admitted them nonetheless as the local department witness, [REDACTED] indicated it was easier for her to testify with reference to the documents she used in her investigation, rather than those compiled by the local department in LD Ex. 1.

## Testimony

Ms. [REDACTED] testified on behalf of the local department and presented the testimony of [REDACTED] Investigator, OIG.

The Appellant did not appear, and therefore did not testify or offer other witnesses.

## FINDINGS OF FACT

I find the following facts by clear and convincing evidence:

1. The Appellant has been receiving FSP benefits for a household of one since February 2007.
2. In January 2017, the Appellant filed an application for FSP benefits. She listed her address as [REDACTED] Maryland, [REDACTED]. She reported \$800 in monthly rent or mortgage and utilities. She did not indicate if she shared shelter costs with anyone else.
3. In August 2017, the Appellant filed an application for FSP benefits. She listed her address as [REDACTED] Maryland, [REDACTED]. She reported \$680 in monthly rent or mortgage and utilities and indicated that she did not share these costs with anyone else. She also listed a separate mailing address of [REDACTED] [REDACTED] Maryland.
4. On both the January 2017 application and the August 2017 application, which the Appellant completed in electronic form, the Appellant affirmed that the information provided was true, correct, and complete.
5. A [REDACTED] is located at [REDACTED]. The Appellant did not have a hotel room at this location under her name in January 2017 or August 2017.
6. The Appellant did not have shelter costs at the [REDACTED] address in August 2017.

7. Based upon the FSP application of August 2017, the Appellant received FSP benefits for a household of one. The false shelter expenses she submitted were included in the calculation of her benefits.

8. The Appellant has had no prior IPV's of the FSP.

### **DISCUSSION**

The local department alleges that on her August 2017 FSP application, the Appellant falsely claimed that she paid shelter costs. A household's eligibility for FSP participation, and the amount of benefits, is determined in part by household composition and income. 7 C.F.R. § 273.10; *see also* COMAR 07.03.17.42; COMAR 07.03.17.44. Shelter costs are factored into the household's net monthly income, which is then used to determine the amount of any benefit. COMAR 07.03.17.43I; COMAR 07.03.17.44. The necessary information is provided on the FSP application. 7 C.F.R. § 273.10; *see also* COMAR 07.03.17.14A(1), E(1). Once a household is determined eligible for FSP participation, certain changes that could affect its eligibility must be reported. 7 C.F.R. § 273.12(a); *see also* COMAR 07.03.17.47; COMAR 07.03.17.48.

An IPV is an intentionally false or misleading statement or misrepresentation, concealment, or withholding of facts concerning the FSP, or any act that constitutes a violation of the FSP; the FSP regulations; or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of FSP benefits. 7 C.F.R. § 273.16(c); *see also* COMAR 07.03.10.02B(5). Federal regulations set out the criteria for states to engage in an ADH for an IPV. *See* 7 C.F.R. § 273.16(a). Maryland's regulations outline that a local department "shall investigate and refer any suspected cases of an IPV for an administrative disqualification hearing" in accordance with COMAR 07.03.10, which establishes the procedures to be used by the local department to disqualify individuals from the FSP when there is sufficient evidence to substantiate the decision that the individual has committed an IPV. COMAR 07.03.17.56; COMAR 07.03.10.01.

If an appellant or an appellant's representative cannot be located or fails to appear at the hearing without good cause, the hearing shall be conducted without the household member being represented. 7 C.F.R. § 273.16(e)(4). The Administrative Law Judge (ALJ) shall determine "whether proper notice of the hearing was sent and whether the appellant requested a postponement."<sup>6</sup> COMAR 07.01.04.11C(1); *see also* 7 C.F.R. § 273.16(e)(2)(iv). If proper notice was sent and the appellant did not request a postponement, then the ALJ shall conduct the hearing. COMAR 07.01.04.11C(3); *see also* 7 C.F.R. § 273.16(e)(4).

The OAH mailed the Notice of Hearing (Notice) to the Appellant at the address of record with the local department.<sup>7</sup> The Notice was returned to the OAH marked "return to sender, wrong address." However, this was the address most recently provided by the Appellant to the local department. The OAH did not receive a request for postponement from the Appellant prior to the date of the hearing. As the Notice was sent to the most current address the Appellant has on file with the local department, I find that proper notice of the hearing was sent to the Appellant.<sup>8</sup> *See State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 447 (2015). On September 26, 2018, I conducted the hearing as scheduled.

At the ADH, the local department bears the burden of proving an IPV by clear and convincing evidence. 7 C.F.R. § 273.16(e)(6); *see also* COMAR 07.01.04.12A, C(1). This standard is more demanding than the "preponderance of the evidence" (more likely than not) standard but is not as onerous as the "beyond a reasonable doubt" standard. *See Berkey v. Delia*, 287 Md. 302, 319-20 (1980).

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<sup>6</sup> The ALJ "[m]ay reopen the record and conduct another hearing if notified within 10 calendar days of the original hearing date that the appellant had good cause for not appearing and for not asking for a postponement before the hearing." COMAR 07.01.04.11C(4); *see also* 7 C.F.R. § 273.16(e)(4).

<sup>7</sup> The most current address the local department has on record is [REDACTED] Maryland. This is the address to which notice was sent.

<sup>8</sup> See CARES narrative, LD. Ex. 1, pp. 86 – 88, documenting the Appellant's updates to her address.

If the local department meets its burden, the individual who committed the IPV (not the entire household) shall be disqualified for one year for the first violation, two years for the second, and permanently for the third. 7 C.F.R. § 273.16(b)(1), (11); *see also* COMAR 07.03.10.08B, C.

██████████ Investigator, testified on behalf of the local department. In addition, her written reports were admitted into evidence. Ms. ██████████ explained that the investigation of the Appellant's place of residence was prompted by an investigation of another individual, who resided at ██████████ in ██████████ Maryland. As part of her investigation, Ms. ██████████ reviewed the Maryland Judiciary Case Search web site; ██████████ database; Maryland Motor Vehicle Administration (MVA) records; and Social Security information available through the State Verification Exchange System (SVES) and directly from the Social Security Administration (SSA). All of these records showed the Appellant using the ██████████ address as her home address. Specifically, the ██████████ address appears in Maryland Judiciary Case Search records from December 2016; records for employment at ██████████ in January 2017; MVA records as of March 31, 2017; SVES and SSA records since January 2016. In November 2017, ██████████ database reflects the Appellant's employment at ██████████ with the Appellant's home address listed as ██████████ Maryland.

In December 2017, Ms. ██████████ visited the various addresses associated with the Appellant. She first visited the ██████████ at ██████████ but the hotel manager was not cooperative. However, while the hotel manager would not provide information to Ms. ██████████ she agreed to confirm information Ms. ██████████ might gather in her investigation. Ms. ██████████ then visited ██████████ where she left her card when no one answered the door. Ms. ██████████ received a call from the person who found the card, but that person provided

little information, saying that she would have the Appellant call Ms. [REDACTED] Ms. [REDACTED] then visited [REDACTED] where she left her card with a resident of the home. Later that same day, the Appellant called Ms. [REDACTED] and said she does not reside at [REDACTED] but receives her mail there. She agreed to meet Ms. [REDACTED] at a [REDACTED] near her home, but then corrected herself and said it was near her friend's home. Ms. [REDACTED] noted that the [REDACTED] was only four miles from [REDACTED] The Appellant failed to show for that meeting.

Instead, the Appellant called Ms. [REDACTED] shortly after the missed meeting and stated that she preferred to discuss the matter by phone. The Appellant told Ms. [REDACTED] that she had stayed at the [REDACTED] with her boyfriend, [REDACTED], for several months, first in room [REDACTED] and then in room [REDACTED]. Her sister resides at [REDACTED] and she would sometimes leave the hotel and stay with her sister. She was unable to provide any hotel receipts.

Ms. [REDACTED] then returned to the [REDACTED] where the hotel manager reviewed the records and confirmed that the Appellant did not have a room under her own name. The hotel manager did confirm that the man the Appellant identified as her boyfriend, Mr. [REDACTED] stayed long-term in room [REDACTED]. There was no record of him moving into a different room or staying in room [REDACTED]. On August 7, 2017 (the date of the Appellant's application), the manager confirmed that the room the Appellant identified on her application was booked by out of town guests.

Following her investigation, Ms. [REDACTED] concluded that the [REDACTED] address was clearly not where the Appellant was living on August 7, 2017, and that the information she provided regarding her address of residence and her shelter costs (\$680.00), which she claimed not to share with anyone else, was false. Ms. [REDACTED] was less certain with regard to the January 2017 FSP application, noting that while the Appellant listed \$800.00 in shelter costs on her application, the Appellant may have been staying in a room listed under Mr. [REDACTED]'s name and



contributing to the cost of the room. The Appellant did not claim that she paid the full amount of shelter expenses on her own in the January 2017 application.

Based on the evidence before me, I conclude that the local department has shown by clear and convincing evidence that the Appellant provided false information regarding her residence and shelter costs on her August 2017 FSP application. The address she provided – [REDACTED] – differs from the address she used for other purposes, including SSA benefits, her driver's license, and employment ([REDACTED]). Furthermore, hotel records for the [REDACTED] at [REDACTED] on the date of the FSP application are inconsistent with the Appellant's assertion that she was living there at the time, as there was no room under either her name or her boyfriend's name. When the Appellant spoke to Ms. [REDACTED] the Appellant had an opportunity to refute the allegations by producing hotel receipts or other documentation, but failed to do so.

While it is also likely that the Appellant provided false information on the January 2017 application when she listed [REDACTED] as her address and indicated that she pays \$800.00 per month in shelter expenses, the evidence contradicting her assertions on the January 2017 application is less compelling, and I find that it falls short of clear and convincing. The room the Appellant identified in her January 2017 application was registered to her boyfriend at that time, and it is possible that she listed legitimate, shared shelter costs. Her use of the [REDACTED] address for other purposes could be explained by her statement that she "comes and goes" at her sister's residence.

However, with regard to the August 2017 FSP application, the local department has met its burden of showing by clear and convincing evidence that the Appellant committed an IPV. On the August 2017 FSP application, the Appellant attested that the information provided was true, correct, and complete. The Appellant provided false information despite this attestation.

This is the Appellant's first intentional violation of the FSP. Accordingly, the Appellant is disqualified from receiving benefits for one year. 7 C.F.R. § 273.16(b)(1)(i), (11); *see also* COMAR 07.03.10.08B(1).

### **CONCLUSIONS OF LAW**

I conclude, as a matter of law, that the local department has shown by clear and convincing evidence that the Appellant committed a first IPV of the FSP. 7 C.F.R. § 273.16(e)(6); *see also* COMAR 07.01.04.12C(1); COMAR 07.03.10.02B(5). I further conclude that the Appellant is disqualified from participation in the FSP for one year. 7 C.F.R. § 273.16(b)(1)(i), (11); *see also* COMAR 07.03.10.08B(1).

### **ORDER**

I **ORDER** that the Appellant is found to have committed an Intentional Program Violation of the Food Supplement Program. Therefore, the local department shall impose a one year Food Supplement Program disqualification against the Appellant only.

November 26, 2018  
Date Decision Mailed

Signature Appears on Original

Jennifer L. Gresock  
Administrative Law Judge

JLG/dlm  
#176495

### **REVIEW RIGHTS**

This is the final decision of the Department of Human Services. A party aggrieved by this final decision may file a petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county in which any party resides or has a principal place of business. The petition must be filed within thirty (30) days of the date of this decision. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2018); Md. Rules 7-201 through 7-210. A petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. The Office of Administrative Hearings is not a party to any review process.

**Copies Mailed To:**

[REDACTED]

[REDACTED]

[REDACTED] (*Emailed*)

[REDACTED]