

[REDACTED]

[REDACTED]

[REDACTED]

v.

[REDACTED]

APPELLANT

* BEFORE WILLIAM F. BURNHAM,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No: DHS-[REDACTED]-03-19-31314
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* * * * *

DECISION

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STATEMENT OF THE CASE

This case arises from a referral by the [REDACTED]
(DSS or Local Department), on behalf of the Department of Human Services (DHS), for an
Administrative Disqualification Hearing. 7 C.F.R. § 273.16 (2019).¹ The Local Department
alleged that the Appellant² committed an Intentional Program Violation (IPV) of the Food
Supplement Program (FSP or SNAP).³ The Local Department further informed the Appellant
that she could waive her right to an administrative disqualification hearing (ADH) and accept a
disqualification from the FSP. 7 C.F.R. § 273.16(f); COMAR 07.03.10.05. The Appellant did
not waive her right to an ADH. Accordingly, on October 7, 2019, the Local Department referred

¹ The federal regulations that apply to the Supplemental Nutrition Assistance Program 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 2019 volume.

² "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).

³ The Maryland Program is called the Food Supplement Program (FSP). The federal program is entitled the "Supplemental Nutrition Assistance Program" (SNAP).

the matter to the Office of Administrative Hearings (OAH) for a hearing. After receiving the referral, the OAH scheduled a hearing for November 22, 2019 and notified the parties by mail at their address of record by notice dated October 8, 2019. 7 C.F.R. § 273.16(e)(3). On October 31, 2019, the Office of Inspector General's (OIG) notice was returned to OAH as not deliverable. The OAH scheduled a hearing for December 3, 2019 and notified the parties by mail at their address of record by notice dated November 15, 2019.⁴

On December 3, 2019, the Local Department appeared for the scheduled hearing, but the Appellant was not present when the case was called. After waiting fifteen minutes, I conducted the hearing in her absence. COMAR 28.02.01.23A.

[REDACTED] Office Manager for the FIA,⁵ represented the Local Department. Neither the Appellant nor anyone authorized to represent the Appellant appeared.

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. 2019); 7 C.F.R. § 273.16(e); COMAR 07.01.04; and COMAR 28.02.01.

ISSUES

1. Did the Appellant commit an Intentional Program Violation of the Food Supplement Program?
2. If so, what sanction is warranted?

⁴ On December 31, 2019 the OIG's notice was returned as not deliverable.

⁵ "FIA" is an acronym for Family Investment Administration. COMAR 07.01.02.02.

SUMMARY OF THE EVIDENCE

Exhibits

The Local Department submitted the following exhibits which were admitted into evidence:

LD Ex. 1 Hearing Referral and Case Cover Sheet (pp. 1-2), with the following attachments:

- Waiver of Disqualification Hearing, dated September 17, 2019 (pp. 3-7)
- Advance Notice of Disqualification Hearing, dated September 17, 2019 (pp. 8-12)
- Intentional Program Violation Administrative Disqualification Hearing Pamphlet, pp. 2-4 undated (pp. 13-14)
- Intentional Program Violation "Checklist A," September 9, 2019 (p. 15)
- OIG Investigation and Over payment Results, September 9, 2019 with the following attachments: (p. 16)
 - Report of Welfare Recipient Fraud, April 1, 2016 (p. 17)
 - OIG Findings, September 9, 2019 (pp. 18-21)
 - Food Stamp Calculation Worksheets, various dates September 2015 to June 2017 (pp. 22-26)
 - Benefit History, August 10, 2015 to June 14, 2017 (pp. 27-28)
 - Food Stamp Financial Eligibility, February 2017 to June 2017 (pp. 29-34)
 - DHR⁶ Facts You Should Know About Applying for Temporary Cash Assistance, FSP and Medical Assistance, revised September 2014 (p. 35)
 - FIA Application for Assistance, January 6, 2017 (pp. 36-48)
 - FIA Application for Assistance, May 18, 2016 (pp. 49-61)
 - FIA Application for Assistance, June 3, 2014 (pp. 62-73)
 - DHR Sail Program Application for FSP, June 6, 2014 (pp. 74-86)
 - DHR Sail Program Application for FSP, May 13, 2014 (pp. 87-99)
 - FIA Application for Assistance, December 10, 2015 (pp. 100-12)
 - Assistance Status Inquiry, December 11, 2015 (pp. 113-14)
 - Assistance Status Inquiry, various dates from July 21, 2016 to June 30, 2017 (p. 115)
 - Benefit History, August 10, 2015 to June 14, 2017 (pp. 116-17)⁷

LD Ex. 2 OIG Case Activity Form, December 3, 2019

⁶ Department of Human Resources. The DHR is now known as the DHS.

⁷ I numbered page 118 and was informed that page 118 and the remaining pages of the exhibit were duplicates. Accordingly, I did not further mark or admit the rest of the exhibit. The additional pages are included in the file for completeness.

LD Ex. 3 Home Health Report/Safety Plan, September 9, 2015; [REDACTED] County Public Schools, Office of Pupil Personnel Services/Shared Domicile Disclosure Form, received February 6, 2017; Letter from OIG, April 1, 2019; Circuit Court for [REDACTED] County, Case Information re: Appellant, various dates

The Appellant submitted no exhibits.

Testimony

[REDACTED] and [REDACTED] Investigator for the OIG, testified on behalf of the Local Department.

The Appellant offered no testimony.

FINDINGS OF FACT

I find the following facts by clear and convincing evidence:

1. The Appellant has three children, [REDACTED], [REDACTED] and [REDACTED].⁸ No child shares a father.
2. The Appellant filed applications for FSP benefits for herself and her three children on: May 13, 2014; June 6, 2014; December 10, 2015; May 18, 2016; and, January 6, 2017.
3. On her 2014, 2015, 2018 FSP applications, the Appellant indicated she and her children lived on [REDACTED] in [REDACTED]. On the January 6, 2017 application, the Appellant indicated she lived on [REDACTED] in [REDACTED] with her children.
4. The Appellant signed each application that she understood it was important to give true information, and if she did not, she understood she could be fined, imprisoned or have her benefits reduced. In addition, she signed that she understood she was responsible for repaying falsely obtained FSP benefits.

⁸ I use the children's first names in order to maintain privacy. Their full names appear in the attachments to Local Department Exhibit One.

5. The Appellant agreed to report all changes within ten days in person, by telephone, or by mail to the Local Department, and signed the application as true and correct under penalty of perjury.

6. The Appellant began receiving FSP benefits for a household of four on August 10, 2015. The Appellant received the following FSP benefits:

\$641.00 in August and September 2015;

\$642.00 in October and November 2015;

\$432.00 in December 2015;

\$649.00 from January 1, 2016 to May 14, 2016;

\$216.00 in July 2016;

\$649.00 from August 1, 2016 to December 14, 2016;

\$511.00 from February 1, 2017 to June 14, 2017.

7. A Home Health Report/Safety Plan was completed for [REDACTED] on September 9, 2015. On that date, [REDACTED] resided with her father and great-grandmother on [REDACTED] in [REDACTED]

8. On March 28, 2016, [REDACTED]'s father was granted sole physical custody, and the Appellant was granted supervised visitation.

9. On July 1, 2016, [REDACTED] resided on [REDACTED] in [REDACTED]

10. On April 1, 2016, the OIG received a fraud referral alleging that the Appellant lost custody of her three children seven months prior and was still receiving FSP benefits.

11. The Appellant's FSP benefits ended in June 2017.

12. On September 17, 2019, following an investigation by the OIG, the Local Department informed the Appellant that "[a]llegations were substantiated that [the Appellant] was receiving [FSP] benefits for her three children ... who were not residing in her home."

DISCUSSION

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."⁹ 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 notices of the hearing to the Appellant at her last known address on [REDACTED] in [REDACTED] Maryland that she had provided to the local department.¹⁰ The notice was not returned. The notice was addressed to the Appellant. The Appellant did not request a postponement of the hearing. I find, therefore, that the Appellant received proper notice of the hearing. *See Md. State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 447 (2015). On December 3, 2019, I conducted the hearing as scheduled.

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. § 273.1; 7 C.F.R. § 273.9; COMAR 07.03.17.03; COMAR 07.03.17.30. The necessary information is provided on the FSP application. 7 C.F.R. § 273.2; COMAR 07.03.17.14A(1), E(1). Under the federal regulations that apply to the FSP, the application is signed under penalty of perjury. 7 C.F.R. § 273.2(b)(1)(iii).

⁹ 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).

¹⁰ In addition, the Local Department sent its hearing summary to the Appellant on October 4, 2019 and it was not returned as undeliverable.

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 forth the criteria for states to engage in administrative disqualification hearings 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 a 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.

At the administrative disqualification hearing, the Local Department bears the burden of proving an IPV by clear and convincing evidence. COMAR 07.01.04.12A, C(1); *see also* 7 C.F.R. § 273.16(e)(6). 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).

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); COMAR 07.03.10.08B, C.

For the following reasons, I conclude that the local department has met its burden of showing by clear and convincing evidence that the Appellant committed an IPV. After reviewing all the evidence, I am convinced that on all the applications, the Appellant averred that she resided with her children and attested that the information she provided was true, correct, and complete. However, the local department presented clear and convincing evidence that the

Appellant misrepresented her household composition after her children no longer lived with her. [REDACTED] was no longer in the Appellant's household as of September 9, 2015; [REDACTED]'s father was granted sole physical custody and the Appellant was granted supervised visitation on March 28, 2016; and [REDACTED] resided on [REDACTED] in [REDACTED] on July 1, 2016.

The Local Department alleges that the Appellant improperly received FSP benefits for a household of four from September 2015 until June 2017 when her household actually consisted of one. Ms. [REDACTED] testified that the Appellant failed to report her correct household size because as of September 2015, the Appellant's children lived with their respective fathers, and not with the Appellant. According to Ms. [REDACTED] the Appellant signed applications on May 13, 2014; June 3, 2016, June 6, 2014; December 10, 2015; May 18, 2016, and January 6, 2017 that identified herself and her and three children as household members. Ms. [REDACTED] contended that the Appellant intentionally withheld information that, if disclosed at the time of her applications, would have precluded her from receiving the amount of FSP benefits awarded to a household of four.

Ms. [REDACTED] read the Case Activity Form into the record. LD Ex. 2. She indicated that the case became active on April 1, 2019 following review of the hotline complaint.¹¹ Ms. [REDACTED] read that the Appellant received FSP benefits for [REDACTED] until December 2016, and for [REDACTED] and [REDACTED] until June 2017, and her FSP case was closed in June 2017. According to the Case Activity Form, all three children were placed in a stable environment with their fathers, and the Appellant was only allowed supervised visitation.

On April 16, 2019 the OIG telephoned [REDACTED]'s great-grandmother who confirmed she was the child's caretaker. On the same day, [REDACTED]'s great-grandmother told the OIG [REDACTED] had been in her care since August 2015 and she has received FSP benefits for the child

¹¹ The hotline complaint is dated April 1, 2016. See LD Ex. 1. p. 17.

since 2016. The OIG was also informed that the Appellant was a [REDACTED] who lost custody of her children in August 2015, when each child went to live with her respective father.

The evidence is clear and convincing that [REDACTED] was no longer in the Appellant's household as of September 9, 2015, and therefore the applications submitted by the Appellant on December 11, 2015 and May 18, 2016 contained false and misleading information as to household composition. [REDACTED]'s father was granted sole physical custody and the Appellant was granted supervised visitation on March 28, 2016, and therefore the May 18, 2016 application contained false and misleading information as to household composition because [REDACTED] and [REDACTED] no longer resided with the Appellant. [REDACTED] resided on [REDACTED] in [REDACTED] on July 1, 2016. The Appellant continued to receive FSP benefits until June 2017.

There are no applications in the record after May 18, 2016. The FSP calculation worksheet included a table that contains "HH Comp Rep'd" and "HH Comp Actual"¹² columns dated September 2015 to June 2017. LD. Ex. 1 pp. 23-24. The columns indicate that the Appellant was always a household of one but reported a household of four to eight members. *Id.* It also indicates that applications were submitted on July 21, 2017 and January 7, 2017. The table indicates that the Appellant always listed at least four household members, and indicates that [REDACTED] was not counted beginning in January 2017, because she received FSP benefits as a member of another assistance unit. I cannot determine whether the Appellant continued to provide false and misleading information about her household composition after May 18, 2016, because I have not seen the applications for that period. In addition, the OIG's notes from the April 16, 2019 phone call between OIG and [REDACTED]'s great-grandmother is the only evidence I have that all three children were removed from the Appellant's household in August 2015. It is clear and convincing that [REDACTED] was no longer living with the Appellant in September 2015.

¹² Although not explained, I understand the columns to mean household composition reported and household composition actual.

However, the record is not clear and convincing as to whether the remaining two children lived outside of the Appellant's household until March 2016 and July 2016 respectively. LD Ex. 3.

Based on this analysis, I conclude that the Local Department has established, by clear and convincing evidence that the Appellant purposefully included [REDACTED] on the May 18, 2016 and January 6, 2017 applications when she no longer resided with the Appellant. As a result, the Appellant received FSP benefits without disclosing her true household size for purposes of the eligibility calculation. This constituted concealment, misrepresentation, and withholding of facts relating to the receipt of FSP benefits and constitutes an IPV. 7 C.F.R. § 273.16(c); COMAR 07.03.10.02B(5). The Appellant attested under the penalty of perjury in her applications that the information provided was true, correct, and complete. The Appellant also confirmed in the applications that she read and understood her rights and responsibilities under the FSP. However, she failed to provide accurate information on her FSP applications.

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

CONCLUSIONS OF LAW

I conclude, as a matter of law, that the Local Department established by clear and convincing evidence that the Appellant committed a first Intentional Program Violation of the Food Supplement Program. 7 C.F.R. § 273.16(c); COMAR 07.01.04.12C(1); COMAR 07.03.10.02B(5). I further conclude that the Appellant is disqualified from participation in the Food Supplement Program for one year. 7 C.F.R. § 273.16(b)(1)(i); 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 [REDACTED] shall impose a one-year disqualification from the Food Supplement Program against the Appellant only.

January 29, 2019
Date Decision Issued

WFB/kdp
#184295

Signature Appears on Original

William F. Burnham
Administrative Law Judge

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. 2019); 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]
[REDACTED]
[REDACTED] (Emailed)