

DEPARTMENT OF HUMAN
SERVICES

v.



APPELLANT

* BEFORE NICOLAS ORECHWA,
* ADMINISTRATIVE LAW JUDGE
* THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: DHS- [REDACTED] 58-20-19656

* * * * *

DECISION

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STATEMENT OF THE CASE

This case arises from a referral by the Department of Human Services (DHS), for an Administrative Disqualification Hearing (ADH). The DHS alleges that the Appellant¹ committed an Intentional Program Violation (IPV) of the Temporary Cash Assistance Program (TCA) administered by the Family Investment Administration (FIA). After receiving the referral, the Office of Administrative Hearings (OAH) scheduled a hearing and notified the Appellant by mail at the Appellant's address of record.

¹ "Appellant" means an applicant, recipient, or other individual who is, among other things, the subject of an IPV proceeding. Code of Maryland Regulations (COMAR) 07.01.04.02B(3)(b).

On October 21, 2020, I held a hearing at the OAH in Hunt Valley, Maryland. COMAR 07.01.04.21B.² [REDACTED] ([REDACTED]), Family Investment Specialist III, represented the DHS. The Appellant did not appear for the hearing.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DHS, the procedures for FIA Administrative Disqualification Hearings, 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. 2020); COMAR 07.01.04; COMAR 07.03.10; and COMAR 28.02.01.

ISSUES

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted a summary along with the following exhibits offered by the DHS:

- DHS Ex. 1 - Complaint against the Appellant, November 28, 2016;
- DHS Ex. 2 - Assistance Status Screenshots;
- DHS Ex. 3 - Appellant's Applications and Redetermination Applications;
- DHS Ex. 4 - New Hire Match Screen Shot;
- DHS Ex. 5 - Wage History Inquiry Screenshot;
- DHS Ex. 6 - Paystubs from [REDACTED] t/a [REDACTED];
- DHS Ex. 7 - Affidavit of the Appellant, August 25, 2017;

² Without objection from the DHS, I heard this case in conjunction with DHS- [REDACTED] -03-20-19655 which concerns the Appellant's alleged IPV of the Supplemental Nutrition Assistance Program (SNAP) and concerns the same factual allegations. COMAR 28.02.01.11B(11). However, for the sake of clarity, I shall issue a separate decision for each case.

DHS Ex. 8 - Waiver of Administration Disqualification Hearing form.

The Appellant did not offer any exhibits.

Testimony

█ read the Summary for Appeal Hearing and testified.

The Appellant did not appear.

FINDINGS OF FACT

I find the following facts by clear and convincing evidence:

1. The Appellant commenced working at █ t/a █ (█

█) on April 18, 2016.

2. The Appellant received the following gross salary payments from her work at █

- April 29, 2016 -- \$42.36;
- May 13, 2016 -- \$285.93;
- May 27, 2016 -- \$317.70;
- June 10, 2016 -- \$285.93;
- June 24, 2016 -- \$317.70.

3. On May 13, 2016, the Appellant filed an application with the █
█ (local department) for TCA benefits for an assistance unit of █

The Appellant reported no one in the household was working as of the date of the application and no one in the household had worked in the six months preceding the application.

4. On December 12, 2016, the Appellant filed an application with the local department for TCA benefits for an assistance unit of █ The Appellant reported no one in the household received income.

5. On May 11, 2017, the Appellant filed an application with the local department for TCA benefits for an assistance unit of [REDACTED]. The Appellant reported working at [REDACTED] beginning March 22, 2017. However, she reported no one in the household received income.³

6. The Appellant signed the applications and on all three affirmed under penalty of perjury that the information provided was true, correct, and complete. The applications included a fraud statement and warning that advised the Appellant of the need to report certain changes to the assistance unit and of the penalties for providing wrong information and for failing to report changes.

7. The Appellant has no previous IPVs.

DISCUSSION

COMAR 07.03.03 sets forth the requirements for an assistance unit⁴ to receive TCA benefits. An assistance unit's eligibility and the amount of benefits are based, in part, on the assistance unit's composition and income. COMAR 07.03.03.04C; COMAR 07.03.03.07; COMAR 07.03.03.13. An applicant for TCA benefits must complete and sign an application under penalty of perjury. COMAR 07.03.03.04B(2). Moreover, the applicant must report changes in circumstances to the local department within ten days of the change. COMAR 07.03.03.18B(3). These requirements are printed on the application form.

An IPV is an intentionally "[f]alse or misleading statement or misrepresentation, concealment, or withholding of facts" for the purpose of "establishing or maintaining the assistance unit's eligibility for TCA or for increasing or preventing a reduction of the amount of TCA." COMAR 07.03.10.02B(5)(a)(ii).

³ Going forward, when referring to the May 13, 2016, December 12, 2016 and May 11, 2017 applications collectively, I shall refer to them as "the applications" or "the Appellant's applications."

⁴ An "assistance unit" is a "group of eligible individuals living together for whom cash assistance has been authorized." COMAR 07.03.03.02B(8).

If an appellant or an appellant's representative fails to appear at the hearing without good cause, the hearing shall be conducted without the household member being represented. The Administrative Law Judge (ALJ) shall determine "whether proper notice of the hearing was sent and whether the appellant requested a postponement."⁵ COMAR 07.01.04.11C(1). 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).

I find the Appellant received proper notice of the hearing. On September 14, 2020, the OAH issued notice to the parties that it would conduct a hearing in this matter at 9:00 a.m. on October 21, 2020 at the OAH in Hunt Valley, Maryland. The OAH sent the notice to the Appellant at her address of record, [REDACTED] [REDACTED] [REDACTED]. At the hearing, [REDACTED] confirmed [REDACTED] as the Appellant's address of record with the local department. The United States Postal Service did not return the Notice to the OAH. The Appellant did not notify the OAH of any change of address. COMAR 28.02.01.03E. The Appellant made no request for postponement prior to the date of the hearing. COMAR 28.02.01.16. I find, therefore, that proper notice of the hearing was sent to the Appellant. *See Md. State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 447 (2015). After waiting until 10:28 a.m., on October 21, 2020, I conducted the hearing as scheduled.

At the ADH, the DHS bears the burden of proving an IPV by clear and convincing evidence. COMAR 07.01.04.12C(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). If the DHS meets

⁵ 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).

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.

For the reasons that follow, I find that the DHS has met its burden of showing by clear and convincing evidence that the Appellant committed an IPV. The Appellant reported receiving no income on all three applications. The Appellant attested under the penalty of perjury that information provided was true, correct, and complete. The Appellant also confirmed that she understood the fraud warning and the requirement to report changes to the local department in a timely manner. The paystubs from [REDACTED] reveal the Appellant received income and lied on her applications.

This failure to report resulted in the receipt of TCA benefits to which the Appellant's assistance unit was not entitled. I find the Appellant's actions to be an intentional act, done in order to increase or maintain benefits, and as such, it constitutes an IPV. This is the Appellant's first TCA IPV.

CONCLUSIONS OF LAW

I conclude, as a matter of law, that the DHS has shown by clear and convincing evidence that the Appellant committed a first IPV. COMAR 07.01.04.12C(1); COMAR 07.03.10.02B(5)(a)(ii). I further conclude, as a matter of law, that the Appellant is disqualified from participation in the TCA for one year. COMAR 07.03.10.08B(1).

ORDER

I **ORDER** that the Appellant is found to have committed an Intentional Program Violation of the Temporary Cash Assistance Program. Therefore, the Department of Human Services shall impose a one year disqualification for a first violation.

Signature Appears on Original

December 9, 2020
Date Decision Issued

Nicolas Orechwa
Administrative Law Judge

NO/kdp
#189300

REVIEW RIGHTS

A party aggrieved by this final decision may file a written 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. 2020); Md. Rules 7-201 through 7-210. A separate 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] (Emailed)