

[REDACTED]

[REDACTED]

[REDACTED]

v.

[REDACTED]

APPELLANT

* BEFORE SUSAN H. ANDERSON,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: DHS-[REDACTED]-03-21-06516

* * * * *

DECISION

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STATEMENT OF THE CASE

On March 4, 2021, the [REDACTED] (local department), on behalf of the Department of Human Services (DHS), Office of the Inspector General (OIG), notified the Appellant¹ that it believed she had committed an Intentional Program Violation (IPV) of the Supplemental Nutrition Assistance Program (SNAP)² 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) (2020).³ The local department further informed the Appellant that she could waive her right to an ADH and accept a disqualification from the SNAP. *Id.* § 273.16(f). The Appellant did not waive her right to an ADH.

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).
² Effective July 1, 2020, the State of Maryland renamed the Food Supplement Program (FSP) SNAP, consistent with the federal program’s name. Md. Code Ann., Hum. Servs. § 5-501(a)(1) (Supp. 2020).
³ The federal regulations that apply to the SNAP are found in Title 7 of the Code of Federal Regulations (C.F.R.). Unless otherwise noted, all citations to the C.F.R. are to the 2020 volume.

Accordingly, on March 22, 2021, the local department referred the matter to the OAH for a hearing.

On March 25, 2021, the OAH mailed a Notice of Hearing to the Appellant at her address of record, which advised the Appellant that an ADH would be held on May 6, 2021 via telephone. On May 6, 2021, I held a hearing as scheduled. *Id.* § 273.16(e); *see also* COMAR 07.01.04.21B. [REDACTED] Appeal Representative, represented the local department. The Appellant did not appear for the hearing.⁴

The contested case provisions of the Administrative Procedure Act, the federal procedures for SNAP disqualification hearings, 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. 2020); 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 SNAP?
2. If so, what sanction is warranted?

SUMMARY OF THE EVIDENCE

Exhibits

The local department's hearing referral packet was admitted into evidence as LD Ex. #1, which included the Office of the Inspector General (OIG) investigative finding and the following page-numbered attachments:

- Email Report Welfare Recipient Fraud, May 6, 2019, pp. 1-2
- CARES⁵ Household Addresses print out, undated, p. 3

⁴ The day before the hearing, the Appellant provided a telephone number where she could be reached for the hearing. I called the number twice but the call went straight to voicemail each time.

⁵ This acronym was not explained on the record or in any of the exhibits.

- Maryland Department of Human Resources (DHR)⁶ Family Investment Administration Application for Assistance, October 11, 2017, pp. 4-16
- DHR Family Investment Administration Application for Assistance, November 1, 2018, pp. 17-32
- DHR Family Investment Administration Application for Assistance, December 13, 2018, pp. 33-46
- Redetermination Face to Face Interview, March 19, 2019, pp. 47-53
- Redetermination Face to Face Interview, March 15, 2018, pp. 54-59
- Case Information Report, Maryland Judiciary Case Search, Circuit Court of Maryland for ██████████ County, Custody Case No. ██████████, printed January 23, 2020, pp. 60-63
- Report and Recommendation of Magistrate, Circuit Court for ██████████ County, Maryland, Case No. ██████████, ██████████ 2017, pp. 64-65
- Default Order, Circuit Court for ██████████ County, Maryland, Case No. ██████████, signed ██████████ 2018, p. 66
- ██████████ County Public Schools (██████████ CPS) Personal & Family Information/Student Registration for ██████████ with Tenant Residence Verification Form, January 25, 2018, pp. 67-68
- ██████████ CPS Personal & Family Information/Student Registration for ██████████, August 31, 2017, p. 69
- ██████████ CPS Personal & Family Information/Student Registration for ██████████ with permission letter signed by ██████████ and Tenant Residence Verification Form, November 6, 2019, pp. 70-72
- ██████████ CPS Tenant Residence Verification Form, August 21, 2019, p. 73
- ██████████ CPS Residency Confirmation Authorization, August 22, 2019, p. 74
- ██████████ CPS Personal & Family Information/Student Registration for ██████████, August 26, 2019, p. 75
- State of Maryland OIG Witness Statement of ██████████ February 20, 2020, p. 76
- State of Maryland OIG Witness Statement of ██████████ February 20, 2020, p. 77
- Waiver of ADH, March 4, 2021, pp. 78-82
- Advance Notice of ADH, March 4, 2021, pp. 83-88

The Appellant did not offer any exhibits.

Testimony

██████████ testified on behalf of the local department and presented the testimony of ██████████ OIG Fraud Investigator.

The Appellant did not testify or offer other witnesses.

⁶ On July 1, 2017, the DHR became the DHS.

FINDINGS OF FACT

I find the following facts by clear and convincing evidence:

1. On [REDACTED] 2012, the Appellant and her husband, [REDACTED], were divorced. At this time, Mr. [REDACTED] was awarded primary physical custody of [REDACTED]⁷ and [REDACTED] and the Appellant was awarded visitation. (*Id.*, pp. 64-65.)
2. In March 2017, Mr. [REDACTED] was awarded temporary custody of both boys after he filed a Protective Order against the Appellant; both boys resided with him full time until September 2017. (*Id.*)
3. On [REDACTED] 2018, the Circuit Court for [REDACTED] County, Maryland awarded Mr. [REDACTED] sole legal and primary custody of [REDACTED] and [REDACTED] the Appellant was allowed visitation every Wednesday and every other weekend. (*Id.*, p. 66.) Thereafter, with the exception of a brief period at the end of 2019, the boys lived with Mr. [REDACTED] and his mother, [REDACTED].
4. On October 11, 2017 and March 15, 2018, the Appellant filed an application and a redetermination application, respectively, with the local department for SNAP benefits for a household of four: her sons [REDACTED] and [REDACTED] her father, and herself. (LD Ex. 1, pp. 4-16; 54-59.) At neither time did [REDACTED] and [REDACTED] live in her household.
5. On November 1, 2018, the Appellant filed another application with the local department for SNAP benefits; on this application, she indicated that her household consisted of herself and her two sons, for a household of three.⁸ (*Id.*, pp. 17-32.) At that time, [REDACTED] and [REDACTED] did not live in her household.

⁷ The Court records refer to him as "[REDACTED]" but his full name is [REDACTED] so that is the name I use throughout this decision.

⁸ Evidence shows that the Appellant's father died. It appears that the Appellant's father died sometime between March 15, 2018 and November 1, 2018 as he is not listed on any SNAP applications after March 15, 2018.

6. On December 13, 2018, the Appellant filed an interim change application with the local department for SNAP benefits; on this application, the Appellant indicated that her niece, [REDACTED] had become part of her household. The Appellant represented on the application that her household therefore consisted of four people at this time: the Appellant, her two sons, and her niece. (*Id.*, pp. 33-46.) At that time, [REDACTED] and [REDACTED] did not live in her household.

7. On March 11, 2019, on her redetermination application, the Appellant indicated that her niece was no longer part of the household but that her sons were living in her household. She represented that her household at this time consisted of three people. (*Id.*, pp. 47-53.) At that time, [REDACTED] and [REDACTED] did not live in her household.

8. Each time the Appellant signed the applications and redetermination applications, she affirmed that the information provided was true, correct, and complete. The applications and redeterminations also advised the Appellant of the need to report certain changes to the household and of the penalties for providing wrong information and for failing to report changes.

9. On or about November 6, 2019, [REDACTED] went to live with the Appellant, with Mr. [REDACTED]'s permission. (*Id.*, pp. 70; 71; 76.)

10. [REDACTED] returned to live with Mr. [REDACTED] in January 2020.

11. The Appellant has had no prior intentional SNAP violations.

DISCUSSION

THE APPELLANT'S FAILURE TO APPEAR

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 provided the Notice of Hearing (Notice) to the Appellant by United States mail sent to the Appellant’s address on 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 mailing 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. On May 5, 2021, the Appellant called the OAH and provided a telephone number where she could be reached for the hearing. I called the number¹⁰ twice, once at 9:00 a.m. and once again at 9:15 a.m.; on each occasion, the call went straight to voice mail and I left a message both times. I conclude, therefore, that proper notice of the hearing was provided to the Appellant, and that the Appellant did not request a postponement. COMAR 28.02.01.05A, C; *see also Md. State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 447 (2015). On May 6, 2021, I conducted the hearing as scheduled.

THE APPLICABLE LAW AND THE BURDEN OF PROOF

A household’s eligibility for SNAP 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. The necessary information is provided on the SNAP application. 7 C.F.R. § 273.10; *see also* COMAR 07.03.17.14A(1), E(1). Once a household is determined eligible for SNAP 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.

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 For confidentiality reasons, I will not list the number in this decision but I did recite it on the record both times I called.

An IPV is an intentionally false or misleading statement or misrepresentation, concealment, or withholding of facts concerning the SNAP, or any act that constitutes a violation of the SNAP; SNAP regulations; or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of SNAP 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)(2). Maryland's regulations provide that a local department "shall investigate and refer any suspected cases of an IPV for an [ADH]" in accordance with COMAR 07.03.10, which establishes the procedures to be used by the local department to disqualify individuals from the SNAP 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 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 07.01.04.12C(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). The Maryland Court of Appeals explained the clear and convincing standard as follows: "To be clear and convincing, evidence should be 'clear' in the sense that it is certain, plain to the understanding, and unambiguous and 'convincing' in the sense that it is so reasonable and persuasive as to cause you to believe it." *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:8 (3d ed. 2000)).

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. For the reasons that follow, I conclude the local department has met its burden

of showing by clear and convincing evidence that the Appellant committed a first IPV of the SNAP.

ANALYSIS

In support of its case, the local department presented the applications signed by the Appellant and filed with the local department between 2017 and 2019. All applications listed [REDACTED] and [REDACTED] as household members. The local department also provided the [REDACTED] 2018 Default Order (Order) issued by the Circuit Court for [REDACTED] County, Maryland that awarded primary custody of [REDACTED] and [REDACTED] to their father. (*Id.*, p. 66.) The Report and Recommendation of Magistrate that led to the issuance of the Order included information showing that the boys lived with Mr. [REDACTED] full-time from March 2017 until September 2017. (*Id.*, p. 64.)

While the investigation records show that the Appellant registered [REDACTED] for school on August 31, 2017 and indicated that he resided with her at that time (*Id.*, p. 69), they also show that as of January 25, 2018, Mr. [REDACTED] updated the registration to show that [REDACTED] resided with him at that time. (*Id.*, pp. 67-68.) In addition, the documents include a Tenant Residence Verification Disclosure Form for [REDACTED] showing that as of August 21, 2019, he was residing with his father. (*Id.*, p. 73.) All the school records corroborate the information contained in the court documents.

Further, [REDACTED] OIG Investigator, obtained witness statements from both [REDACTED] and from a neighbor of the Appellant, [REDACTED] Mr. [REDACTED] confirmed that both boys resided with him full time, except for the period between [REDACTED] 2019 and January 2020 when [REDACTED] resided with the Appellant. (*Id.*, p. 76.) Ms. [REDACTED] who lived across the street from the Appellant, confirmed that the Appellant had lived in the house with her father until he died but she had only seen the boys there once. (*Id.*, p. 77.)

The Appellant did not participate in the hearing to rebut any of the evidence offered by the local department. The evidence provided by the local department has shown by clear and convincing evidence that the Appellant committed an IPV when she listed her sons on her various applications for SNAP benefits despite the fact that during a majority of the time covered by the applications, both [REDACTED] and [REDACTED] lived with their father and paternal grandmother.

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

ORDER

I **ORDER** that the Appellant is found to have committed an IPV of the SNAP. Therefore, the local department shall impose a one-year SNAP disqualification against the Appellant only.

May 18, 2021
Date Decision Mailed

Signature Appears on Original

Susan H. Anderson
Administrative Law Judge

SHA/da
#192016

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:

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