

[REDACTED]

* BEFORE SYEETAH HAMPTON-EL,

[REDACTED]

* AN ADMINISTRATIVE LAW JUDGE

[REDACTED]

* OF THE MARYLAND OFFICE

v.

* OF ADMINISTRATIVE HEARINGS

[REDACTED]

*

APPELLANT

* OAH No.: DHS-[REDACTED] 03-21-21712

* * * * *

DECISION

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STATEMENT OF THE CASE

On September 1, 2021, [REDACTED] (local department), on behalf of the Department of Human Services (DHS), notified the Appellant¹ that it believed the Appellant 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) (2021).³ The local department further informed the Appellant that the Appellant could waive her right to an ADH and accept a disqualification from the SNAP.

¹ "Appellant" means an applicant, recipient, or other individual who is, among other things, the subject of an Intentional Program Violation (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 SNAP, consistent with the federal program's name. Md. Code Ann., Hum. Servs. § 5-501(a)(1) (Supp. 2021).

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 herein to the C.F.R. are to the 2021 volume.

Id. § 273.16(f). The Appellant did not waive her right to an ADH. Accordingly, on September 24, 2021, the local department referred the matter to the OAH for a hearing.

On September 28, 2021, 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 October 29, 2021 at the local department's office at [REDACTED] Maryland. On October 29, 2021, the assigned Administrative Law Judge postponed the matter because the Appellant could not enter the [REDACTED] [REDACTED] as she had been exposed to COVID-19.

On November 3, 2021, the OAH mailed a second Notice of Hearing to the Appellant for a hearing scheduled on December 6, 2021 at the local department's office. On December 6, 2021, I held a hearing as scheduled. *Id.* § 273.16(e); *see also* COMAR 07.01.04.21B. [REDACTED] [REDACTED] Appeals Representative, represented the local department. The Appellant appeared but could not stay in the building as she stated she felt nauseous. I offered her an opportunity to participate from her car by telephone and she agreed. The local department called the Appellant four times at the number she provided, but the Appellant did not answer. After waiting fifteen minutes, I proceeded in the Appellant's absence.

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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); 7 C.F.R. § 273.16(e); COMAR 07.01.04; 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

I admitted the following exhibits offered by the local department:

LD Ex. 1 - 178-page Referral Packet, with the following attachments:⁴

- Transmittal to the OAH, dated October 13, 2021 (unnumbered)
- Contact Information for the Appellant and local department representative (unnumbered)
- OIG Findings (unnumbered)
- Table of Contents:
 - Exhibit 1 – Email Referral, dated May 14, 2019 (p. 1)
 - Exhibit 2 – Clients' Automated Resources and Eligibility System (CARES) Screens (pp. 2-4)
 - Exhibit 3 – DHR⁵ Applications and Redeterminations for the Appellant, various dates (pp. 5-79)
 - Exhibit 4 – DHR Applications, Redeterminations, and Social Security Administration Supplemental Security Income (SSI) for [REDACTED] various dates (pp. 80-106)
 - Exhibit 5 – Maryland Judiciary documents, various dates (pp. 107-143)
 - Exhibit 6 – Maryland Automated Benefits (MABS) Wage History, dated October 11, 2019 (p. 144)
 - Not Offered and not included - Exhibit 7 (p. 145)
 - Exhibit 8 – Employment Verification for [REDACTED] dated May 28, 2020 (p. 146)
 - Exhibit 9 – CARES Narrative for [REDACTED] various dates (p. 147)
 - Exhibit 10 – SSI letter for [REDACTED] and SSA letter to Payee for the Appellant, dated February 28, 2019 (pp. 148-165)
 - Exhibit 11 – ADH Waiver Notice for the Appellant, dated September 1, 2021 (pp. 167-178)

The Appellant did not offer any exhibits.

⁴ The local department did not include page 145 or page 166 in the prenumbered packet presented at the hearing.

⁵ On July 1, 2017, the Department changed its name to "DHS."

Testimony

██████████ Appeals Representative testified on behalf of the local department and she presented the following witness:

- ██████████ OIG Investigator

The Appellant did not appear and did not offer exhibits.

FINDINGS OF FACT

I find the following facts by clear and convincing evidence:

1. The Appellant is married to ██████████
2. On February 5, 2015, the Appellant submitted the first application for SNAP benefits for a household of one. The Appellant listed her residential address as ██████████
██████████ Maryland.
3. On December 7, 2015, the Appellant notified the local department that her granddaughter moved in on November 7, 2015.
4. On February 15, 2017, the Appellant submitted an application for SNAP benefits for a household of one.
5. On June 11, 2018, the Appellant submitted a redetermination application for SNAP benefits for a household of one.
6. On February 2, 2019, ██████████ filed an application, dated January 15, 2019, with the local department for SNAP benefits for a household of one. The Appellant noted a mailing address of ██████████ Maryland. The Appellant noted his address as "staying wherever I can." (LD Ex. 1, p. 80).
7. The Appellant signed the application and affirmed that the information provided was true, correct, and complete. The application 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.

8. On February 28, 2019, the SSI Summary recounted statements made by [REDACTED] in support of his SSI application. He noted that since January 1, 2018, he resided with the Appellant at [REDACTED] Maryland. The Appellant agreed to serve as the SSI payee for her husband. The Appellant affirmed under the penalty of perjury that the information provided was true and correct to the best of her knowledge.

9. On February 28, 2019, to become the SSI payee, The Appellant listed her mailing address and home address as [REDACTED] Maryland. She reported to the SSA that her husband lives with her.

10. On May 14, 2019, the local department submitted a complaint to the OIG regarding the Appellant's address. The Appellant listed the same address as her spouse, [REDACTED] [REDACTED] also applied for SNAP benefits.

11. [REDACTED] is the owner of [REDACTED] Maryland.

12. Based upon the SNAP application of January 15, 2019, the Appellant received SNAP benefits for a household of one.

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

DISCUSSION

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 07.03.17.14. 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.

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 outline 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.

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."⁶ 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 to the Appellant's address on record with the local department. The United States Postal Service

⁶ 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).

did not return the Notice to the OAH. The Appellant did not notify the OAH of any change of mailing address or phone number. 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 the date of the hearing, the Appellant appeared but could not stay inside the hearing room because she felt ill; however, she agreed to participate by telephone from her car. The Appellant provided a telephone number to be used but after four calls she did not answer the telephone. I waited fifteen minutes and deemed the Appellant failed to appear.

Therefore, I find that the Appellant received proper notice of the hearing. COMAR 28.02.01.05A, C; *see also Md. State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 447 (2015). On December 6, 2021, 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 07.01.04.12C(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.

The local department argued that the Appellant submitted multiple SNAP applications for a household of one and reported her mailing address as [REDACTED] Maryland; however, her husband also submitted a SNAP application and an SSI application stating he lived at the same address. Therefore, the Appellant committed an IPV based on household composition.

For the reasons that follow, I conclude that the local department has met its burden of showing by clear and convincing evidence that the Appellant committed an IPV. On the SNAP application, the Appellant attested that the information provided was true, correct, and complete. The Appellant also confirmed her understanding of the obligation to report certain changes in the household, and that SNAP benefits could be lost for failure to report or for giving wrong information. 7 C.F.R. § 273.12(d); *see also* COMAR 07.03.17.47; COMAR 07.03.17.48.

[REDACTED] Appeals Representative, and [REDACTED] OIG Investigator, both testified on behalf of the local department. Ms. [REDACTED] explained her investigation began because of an email complaint from the local department on May 14, 2019, in which the local department reported that the Appellant and [REDACTED] her husband, both applied for SNAP benefits for a household of one, but they have the same address. Ms. [REDACTED] confirmed the Appellant's address via his SNAP applications, SSI Benefits Summary, and Maryland Judiciary case search documents. Ms. [REDACTED] testified she reviewed the SDAT⁷ records and determined [REDACTED] was the owner of [REDACTED]. Based on the investigation, Ms. [REDACTED] confirmed that the Appellant resided at [REDACTED] and allowed her husband to use the address as

⁷ State Department of Assessments and Taxation.

both a mailing address and a residential address on his SNAP applications and SSI application. Therefore, Ms. [REDACTED] determined the Appellant committed her first intentional program violation of the SNAP program.

Based on the evidence, I find that the local department properly determined that the Appellant committed an intentional violation of the SNAP. I find that the Appellant applied for SNAP benefits and reported her address as [REDACTED]. In addition, the local department presented documentation of the Appellant and her husband sharing the [REDACTED] address; including the SSI Benefit Summary and Payee information. To become the SSI Payee, the Appellant confirmed that her husband lives with her at the [REDACTED] address. The Appellant agreed under the penalty of perjury that the information was true and accurate.

Pursuant to the SNAP Manual Section 100.3⁸, a required household composition includes spouses who are married and live together. In this case, the Appellant is married and has been for many years. Based on the SSI application and Payee application, both completed under the penalty of perjury, I find that the Appellant and her husband live together.

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). The local department did not request, and I do not find, that the Appellant made fraudulent statements with respect to residency in order to receive multiple SNAP benefits simultaneously, which disqualifies the Appellant for ten years. *See* 7 C.F.R. § 273.16(b)(5); COMAR 07.03.10.08B(4).

⁸ *See also* COMAR 07.03.17.02B(25) and COMAR 07.03.17.03C(3).

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), (11); *see also* COMAR 07.03.10.08B(1).

ORDER

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

Signature Appears on Original

January 13, 2022
Date Decision Issued

Syeetah Hampton-EL
Administrative Law Judge

SAH/cj
#196239

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) (2021); 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)

[REDACTED] (Emailed)