

[REDACTED]

* BEFORE ABENA Y. WILLIAMS,

[REDACTED]

* ADMINISTRATIVE LAW JUDGE

v.

* THE MARYLAND OFFICE

[REDACTED]

* OF ADMINISTRATIVE HEARINGS

APPELLANT

* OAH No.: DHS-[REDACTED]-58-21-24047

* * * * *

REVISED DECISION¹

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STATEMENT OF THE CASE

On September 22, 2021, the [REDACTED] (local department), on behalf of the Department of Human Services (DHS), Office of the Inspector General (OIG), notified the Appellant² that it believed the Appellant committed an Intentional Program Violation (IPV) of the Temporary Cash Assistance Program (TCA) administered by the Family Investment Administration (FIA) by failing to accurately report the members of her assistance unit and income. The matter was referred to the Office of Administrative Hearings (OAH) for an Administrative Disqualification Hearing (ADH).³

¹ "Date Decision Mailed" was revised to reflect the correct year. The original decision was mailed 1/14/22.

² "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).

³ Prior to its referral of the case for an ADH, the local department sent an Advance Notice and Waiver of ADH, by certified and first-class mail, to the Appellant's address of record with the local department, setting forth the basis of the alleged IPV and allowing the Appellant to accept a disqualification from TCA in lieu of an ADH. The Appellant did not waive her right to an ADH. COMAR 07.03.10.06A. Accordingly, on October 15, 2021, the local department referred the matter to OAH for a hearing.

After receiving the referral, on October 15, 2021, the OAH scheduled an ADH, and notified the parties by mail at their respective addresses of record that an ADH would be held on December 1, 2021, at the OAH in Hunt Valley, Maryland. On December 1, 2021, I held the ADH as scheduled. COMAR 07.01.04. 21B. [REDACTED] Family Investment Specialist III, 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, the procedures for FIA ADH, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 07.01.04; COMAR 07.01.04; COMAR 07.03.10; COMAR 28.02.01.

ISSUES

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

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits in evidence offered by the local department:

- LD Ex. 1 - Referral for Investigation Form, pp. 1-4, dated June 13, 2016
- LD Ex. 2 - Appellant Participation History, Client Automated Resource Eligibility System (CARES), pp. 5-159, printed August 13, 2021 with the following attachments:
- Assistance Status Screen (STAT), printed August 13, 2021
 - Coding Information, printed August 13, 2021
 - Temporary Cash Assistance (TCA) & SNAP Applications, dated April 7, 2015
 - TCA Applications for Assistance, dated January 25, 2017; March 24, 2017; August 23, 2017 and; November 6, 2019
 - SNAP Applications, dated May 23, 2017; October 22, 2018 and; January 17, 2019
 - Redetermination Request Forms, dated April 17, 2016 and March 24, 2017
 - Emergency Assistance Application, April 12, 2017
 - Statement from Appellant to local department, dated June 9, 2016
 - Photocopy of Appellant's MVA Driver's License, issued July 12, 2016

- [REDACTED] Income Report for [REDACTED] dated June 2014 – May 2017
- Earnings Statement from [REDACTED] for [REDACTED] [REDACTED] dated May 2017 – January 2018
- Paystubs for [REDACTED] dated January 12, 2018 – January 26, 2018; Change of Address Submitted by Appellant to local department, dated January 10, 2019
- Circuit Court of [REDACTED] County (Circuit Court) Guardianship Order, dated [REDACTED] 2019
- Change Report submitted to local department from [REDACTED] dated June 19, 2019
- CARES Assistance Status Report for [REDACTED] [REDACTED], and [REDACTED] for TCA, June 19, 2019
- Caseworker Narrations, dated June 20, 2019 and July 18, 2019
- Case Summary, undated; Customer Transaction History, June 7 2019 – May 13, 2020
- Benefit History Listing, printed July 7, 2020
- Maryland Automated Benefits Wage History, printed March 13, 2020
- CARES Screens, dated April 30, 2020; April 16, 2020 and; February 13, 2020
- Electronic Disqualification Recipient System (EDRS), undated

LD Ex. 3 - EDRS Inquiry, pp. 157-159, September 22, 2021, with the following attachment: Waiver of ADH, DHS IPV Pamphlet, revised August 2018

LD Ex. 4 - Local Department Findings, pages not numbered, dated July 8, 2020

LD Ex. 5 - Maryland EBT Pamphlet, pages not numbered, undated, with the following attachment: IPV ADH Pamphlet

The Appellant failed to appear and therefore did not offer any exhibits.

Testimony

[REDACTED] Fraud Investigator, OIG, and [REDACTED] testified on behalf of the local department. The Appellant was not present to testify.

FINDINGS OF FACT

I find the following facts, by clear and convincing evidence:

1. Between June 19, 2014 and January 2018, [REDACTED] the father of the Appellant's children's, earned wages from [REDACTED] and [REDACTED]

██████████ Employment records indicate that his address at the time was ██████████

██████████ MD ██████████ The Appellant lived at this address during this time period.

2. On April 7, 2015, the Appellant filed an application for redetermination with the local department for TCA benefits for an assistance unit of three people (herself and her minor son and daughter, born in 2012 and 2013). Based on this application, the Appellant received TCA benefits for an assistance unit of three with no deductions for earned income. The Appellant listed her address as ██████████ MD ██████████

3. On June 9, 2016, the Appellant submitted a letter to the local department stating that she shared rent with Mr. ██████████ and he resided in the basement of her home.

4. On January 25, 2017, the Appellant filed an application with the local department for TCA benefits for an assistance unit of four (herself and three of her minor children, born in 2012, 2013, 2016). Based on this application, the Appellant received TCA benefits for an assistance unit of four with no deductions for earned income. The Appellant listed her address as ██████████ MD ██████████

5. On March 24, 2017, the Appellant filed an application for redetermination for an assistance unit of four (herself and three of her minor children). Based on this application, the Appellant received TCA benefits for an assistance unit of four with no deductions for earned income. The Appellant listed her address as ██████████ MD ██████████

6. On August 23, 2017, the Appellant filed an application for redetermination for a household of four (herself and three of her minor children). Based on this application, the Appellant received TCA benefits for an assistance unit of four with no deductions for earned income. The Appellant listed her address as ██████████ MD ██████████

7. On [REDACTED] 2019, the Circuit Court for [REDACTED] issued an order for temporary guardianship of the Appellant's minor son and daughter, born in 2012 and 2013, to [REDACTED] the children's aunt.

8. The Appellant did not report this change in her household to the local department.

9. On November 4, 2019, the Appellant filed an application with the local department for TCA benefits for an assistance unit of two people (herself and her minor son, born 2016). She listed [REDACTED] as an absent parent. Based on her application, the Appellant received TCA benefits for an assistance unit of two with no deductions for earned income.

10. On each application, the Appellant signed and 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.

11. On September 22, 2021, the OIG mailed an Advance Notice of ADH, a Waiver of ADH (Waiver), and an appointment letter to the Appellant at her address of record. The Investigator assigned to the case attempted to contact the Appellant by phone, with no success.

12. The Appellant has no prior intentional TCA violations.

DISCUSSION

I

Governing Regulations—TCA

The Family Investment Program (FIP), administered by the DHS through the local departments of social services, provides assistance to families with children while preparing program participants for independence. COMAR 07.03.03.01A. TCA is one of three chief

components of the FIP. Md. Code Ann., Hum. Servs. § 5-301(e) (2021); *see also* COMAR 07.03.03.01A, .03C.

Eligibility for TCA participation, and the amount of benefits granted, is determined chiefly by household—termed for TCA purposes an assistance unit—composition and income. COMAR 07.03.03.04C; *see also* COMAR 07.03.03.07; COMAR 07.03.03.13. An applicant for TCA benefits must complete and sign an application setting forth this information and other material information under penalty of perjury. COMAR 07.03.03.04B(2). Once an assistance unit is determined to be eligible for TCA participation, any changes that could affect its eligibility, such as a change in the composition of the assistance unit, must be reported to the local department within ten days of the change. COMAR 07.03.03.18B(3).

The controlling regulations direct that “the disqualification penalties for intentional program violations [be set forth] in clear, prominent, and boldface lettering on the application form each time the household or individual applies for food supplement benefits or TCA.” COMAR 07.03.10.03. These requirements are included in the application.

IPV

An IPV of TCA 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); *see also* COMAR 07.03.03.02B(26). Once a local department has reason to believe a TCA applicant or recipient has committed an IPV, it must refer the case to the OAH for an ADH. COMAR 07.03.10.04C(2); *see also* COMAR 07.03.10.06.

Failure to Appear

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."⁴ 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).

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 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.

I find, therefore, that proper notice of the hearing was provided to the Appellant. COMAR 28.02.01.05A, C; *see also Md. State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 447 (2015). On December 1, 2021, I conducted the hearing as scheduled.

II

Burden of Proof & Disqualification Penalties

At an ADH, the local department bears the burden of proving an IPV by clear and convincing evidence. COMAR 07.01.04.12A, C(1). Clear and convincing evidence is defined "as more than a preponderance of the evidence and less than evidence beyond a reasonable doubt." *Berkey v. Delia*, 287 Md. 302, 320 (1980) (quoting *Whittington v. State*, 8 Md. App. 676, 679, n.3 (1970)). Elaborating upon this definition, the *Berkey* Court explained that:

⁴ 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).

It has...been said that the term “clear and convincing” evidence means that the witnesses to a fact must be found to be credible, and that the facts to which they have testified are distinctly remembered and the details thereof narrated exactly and in due order, so as to enable the trier of the facts to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.

287 Md. at 320 (quoting 30 Am. Jur.2d, Evidence § 1167 (1967)). For the reasons that follow, I find that the local department has met its burden of showing by clear and convincing evidence that the Appellant committed an IPV.

III

Positions of the Parties

The local department contends that the Appellant committed an IPV by failing to declare in her initial and redetermination applications for benefits that she resided with Mr. [REDACTED] and that he earned income while a member of the assistance unit. The local department maintains that the Appellant’s address was listed in Mr. [REDACTED]’s employment records. The local department further contends that between 2018 and 2019, two of her three children, born 2012 and 2013, were removed from her home and temporary guardianship was granted to [REDACTED] [REDACTED] the Appellant’s sister-in-law. (LD Ex. 2). Despite this, the local department argues, the Appellant failed to report changes to her assistance unit and earned income in her applications dated April 7, 2015, January 25, 2017, March 24, 2017, August 23, 2017, and November 4, 2019, and received benefits based on those applications.

Citing the Appellant’s applications for benefits which the local department avers do not accurately reflect the Appellant’s assistance unit’s composition or income, the local department maintains it has proven the Appellant committed an IPV by failing to report this information to the local department.

IV

Analysis

Eligibility for TCA is determined by assistance unit. COMAR 07.03.03.06A. An “assistance unit” is a “group of eligible individuals living together for whom cash assistance has been authorized.” COMAR 07.03.03.02B(8).

An IPV, as its name suggests, is not a strict liability offense, and it requires the Appellant to have acted with a requisite mental state—intent—at the time of the acts at issue. COMAR 07.03.10.02B(5). The language of the TCA IPV regulations establishes a requirement that the Appellant act with the specific intent⁵ to make a false statement or withhold facts for the purpose of receiving TCA or for increasing or preventing a reduction of the amount of TCA. COMAR 07.03.10.02B(5)(a)(ii); COMAR 07.03.03.02B(26).

Mr. [REDACTED]

In support of its position that Mr. [REDACTED] lived with the Appellant, the local department relies upon employment and driving records, showing that Mr. [REDACTED] used the Appellant’s address as his address of record. The employment records of Mr. [REDACTED] indicate that he received income from June 19, 2014, to January 2018 from [REDACTED] and [REDACTED] while residing at [REDACTED] MD [REDACTED] (LD Ex. 2).

As support for its position that she failed to report Mr. [REDACTED]’s income or timely report the change to her assistance unit, the local department cites to the Appellant’s redetermination applications and applications for benefits, in evidence. (LD Ex. 2). The applications reflect that the Appellant lived at [REDACTED] MD [REDACTED] at least from April 2015 to

⁵ In *Bible v. State*, 411 Md. 138, 158 (2009), the Court of Appeals explained that “specific intent is not simply the intent to do the immediate act but embraces the requirement that the mind be conscious of a more remote purpose or design which shall eventuate from the doing of the immediate act.... [Specific intent crimes] require[] not simply the general intent to do the immediate act with no particular, clear or undifferentiated end in mind, but the additional deliberate and conscious purpose or design of accomplishing a very specific and more remote result.” (citation and quotation marks omitted).

August 23, 2017. (LD Ex. 2). On June 1, 2019, the Appellant filed an application to notify the local department of a change in her address.

I am persuaded that the local department has proven the Appellant and Mr. [REDACTED] lived together at least from 2015 to 2017 because the same address identified in her applications for TCA benefits is noted in Mr. [REDACTED]'s employment records. *Id.* Although she reported that Mr. [REDACTED] was living with her and helping with rent and utilities in June 2016, the Appellant failed to list Mr. [REDACTED] as a member of her assistance unit and did not report Mr. [REDACTED]'s income on her applications for assistance between April 2015 and August 2017. COMAR 07.03.03.06, .13, .18.

These facts support an inference⁶ that while receiving TCA benefits, Mr. [REDACTED] lived with the Appellant and she intentionally did not report his income or the change in her assistance unit within the requisite reporting period on her applications dated April 7, 2015; January 25, 2017; March 24, 2017; and August 23, 2017. (LD Ex. 2).

Based on these facts, I find that the Appellant acted with the intent to make “a false or misleading statement” in her TCA applications dated April 7, 2015; January 25, 2017; March 24, 2017; and August 23, 2017 and withhold information regarding Mr. [REDACTED]'s income and residence status. *Id.*; see *Jones v. State*, 440 Md. 450, 457 (2014) (“[A] finder of fact may . . . infer that [a person] intended the natural and probable consequences of the [person’s] actions.”) (internal citation and brackets omitted); *Bible*, 411 Md. at 157 (“[b]ecause intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence”) (citations omitted).

⁶ See *Thornton v. State*, 397 Md. 704, 714, 733 (2007) (“No presumption of intent may be raised by law from an act . . . [O]nly an inference, rather than a presumption of intent, may be drawn from voluntary acts.”) (citations and quotation marks omitted).

Removal of Children from Assistance Unit

In support of its position that the Appellant failed to report the change to her assistance unit after [REDACTED] was granted temporary guardianship of two of her minor children, the local department cites to the Temporary Order of Guardianship issued [REDACTED] 2019, and the Appellant's failure to report the change to her household composition. (LD Ex. 2). After two of her minor children were removed from the Appellant's care, the Appellant's third child, born in 2016, continued to be a member of the Appellant's assistance unit. (LD Ex. 12).

While the Appellant did file an application on November 9, 2019 for only herself and her minor son, who was not under the temporary guardianship of Ms. [REDACTED] I am persuaded that around May 2019 the Appellant failed to report to the local department that two of her three minor children were removed from her assistance unit.

Based on these facts, I infer that the Appellant deliberately did not report that two of her children were no longer a part of her household after they were removed in May 2019. *Id.*; see also *Jones*, 440 Md. 450, 457 (2014); *Bible*, 411 Md. at 157.

On each TCA application, the Appellant attested that the information provided was true, correct, and complete. (LD Ex. 2). She also confirmed that she was aware of the consequences of failing to report changes in her assistance unit in a timely manner, and that TCA benefits could be lost for failure to report or for giving wrong information. *Id.*; see also COMAR 07.03.03.04C, .07, .13; COMAR 07.03.03.04B(2); COMAR 07.03.03.18B(3).

Therefore, after carefully weighing the evidence of record, I am clearly convinced that the Appellant intentionally failed to report two of her children were no longer apart of her assistance unit and withheld that Mr. [REDACTED] was a member of her household from April 2015 to January to August 2017. 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 intentional, done

in order to increase or maintain benefits, and as such it constitutes an IPV.⁷ COMAR 07.03.03.04C, .07, .13; COMAR 07.03.03.04B(2); COMAR 07.03.03.18B(3). This is the Appellant's first TCA violation. *Id.*

CONCLUSIONS OF LAW

I conclude, as a matter of law, that the [REDACTED] has shown, by clear and convincing evidence, that the Appellant committed an Intentional Program Violation of the Temporary Cash Assistance Program. *Bible v. State*, 411 Md. 138 (2009); COMAR 07.01.04.12C(1); COMAR 07.03.10.02B(5)(a)(ii); COMAR 07.03.03.06; COMAR 07.03.03.13, COMAR 07.03.03.18; COMAR 07.03.10.08.

ORDER

Having found the Appellant to have committed an Intentional Program Violation of the Temporary Cash Assistance Program, I hereby **ORDER** that the [REDACTED] shall impose a Temporary Cash Assistance Program disqualification against the Appellant for a period of twelve months.

January 18, 2022
Date Decision Mailed

Signature Appears on Original
[REDACTED]

Abena Y. Williams
Administrative Law Judge

AYW/ja
#196324

⁷ Under the FIP regulations, with specific application to the TCA Program, a whole assistance unit can be disqualified for an IPV. COMAR 07.03.03.19C. At the ADH and on their Notice of Disqualification, the agency made no request or indication that the entire assistance unit be disqualified should an IPV be found.

REVIEW RIGHTS

This is the final decision of the Department of Human Services. 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. 2021); 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.

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