

v.

APPELLANT

* **BEFORE MICHELLE W. COLE,**
* **AN ADMINISTRATIVE LAW JUDGE**
* **OF THE MARYLAND OFFICE**
* **OF ADMINISTRATIVE HEARINGS**
* **OAH No.: DHS-[REDACTED]-58-22-05373¹**

* * * * *

DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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DISCUSSION
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ORDER

STATEMENT OF THE CASE

The [REDACTED] referred this matter to the Office of Administrative Hearings (OAH), on behalf of the Department of Human Services (DHS), for an Administrative Disqualification Hearing (ADH). The local department alleges that the Appellant² 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 OAH scheduled a hearing and notified the Appellant by mail at the Appellant's address of record.

On March 30, 2022, the Appellant filed a Motion to Dismiss (Motion) claiming that the current matter was not properly before the OAH. Code of Maryland Regulations (COMAR)

¹ For hearing purposes, this case was consolidated with Case Number DHS-[REDACTED]-03-22-05372. A separate written decision is being issued in that case.

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).

28.02.01.12B, C. She argued that this matter was already decided in criminal court and at a prior hearing at the OAH. On April 4, 2022, I informed the parties that I would allow arguments on the Motion prior to the hearing.

On April 5, 2022,³ the OAH mailed a Notice of Hearing (Notice) to the Appellant at the Appellant's address of record,⁴ which advised the Appellant that an ADH would be held on May 10, 2022 by telephone. COMAR 28.02.01.20B.

On May 10, 2022, I held the hearing as scheduled by telephone.⁵ COMAR 07.01.04.21B; COMAR 07.01.04.10E; COMAR 28.02.01.20B(1). [REDACTED], Human Services Administrator, represented the local department. The Appellant represented herself before disconnecting from the hearing.⁶

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. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 07.01.04; COMAR 07.03.10; COMAR 28.02.01.

ISSUES

1. Should the Appellant's motion to dismiss be granted?
2. Did the Appellant commit an IPV of the TCA?
3. If so, what sanction is warranted?

³ Because the Appellant did not receive the first notice of hearing and was unaware of the hearing until shortly before the hearing date, the hearing scheduled for April 4, 2022 was postponed. On April 4, 2022, the Appellant indicated that she wanted to hire an attorney and believed that the case was already decided in a prior hearing.

⁴ The Notice was sent to the Appellant's address of record, which was updated by her on April 4, 2022.

⁵ On May 4, 2022, the Appellant requested a postponement of the May 10, 2022 hearing because she was waiting for legal aid to assign her case to a lawyer. The local department opposed the request. After consideration of the parties' arguments, I denied the postponement request.

⁶ While discussing preliminary matters, the Appellant indicated that she would not participate in the hearing and disconnected the telephone call. She made no attempt to reconnect the call.

SUMMARY OF THE EVIDENCE

Exhibits⁷

I admitted the following exhibit offered by the local department:

LD Ex. 1 154-page Referral Packet, March 8, 2022, with the following attachments:

- IPV Case Cover Sheet, February 24, 2022 (p. 1)
- OIG Memorandum and Investigative Finding, February 9, 2022 (pp. 2-4)
- Advance Notice of ADH, February 24, 2022 (pp. 5-9)
- Waiver of ADH, February 24, 2022 (pp. 10-14)
- IPV Pamphlet, revised August 2018 (pp. 15-16)
- Program Fraud Client Report, June 16, 2015 (pp. 17-19)
- Application for Assistance, April 19, 2013 (pp. 20-30)
- Mail-In Benefits Review Form, August 19, 2013 (p. 31)
- Redetermination Review Eligibility Determination Document, February 10, 2014 (pp. 32-42)
- Application for Assistance, September 16, 2014 (pp. 43-53)
- Recertification Application, March 20, 2015 (pp. 54-65)
- Mail-In Benefits Review Form, February 24, 2016 (p. 66)
- Motor Vehicle Administration (MVA) Driving Records, May 23, 2016 and June 29, 2016 (pp. 67-70)
- Ground Rent Registration Information, May 23, 2016 (pp. 71-72)
- Student Summary Information, undated (pp. 73-74)
- Maryland Automated Benefits Wage History Inquiry, June 29, 2016 (pp. 75-76)
- Wage Inquiry, June 16, 2016 (p. 77)
- Payroll Information – [REDACTED], June 16, 2016 (pp. 78-80)
- OIG Inquiry to Postmaster, May 24, 2016 (p. 81)
- Social Media Posts, February 7,⁸ November 29, 2014, December 17-18, 2015 (pp. 82-87)
- Client List Inquiry, June 15, 2016 (pp. 88-89)
- Benefit History Listing Inquiry, June 15, 2022 (pp. 90-95)
- Benefit Error Group Status Inquiry, September 7, 2016 (pp. 96-109)
- Case Narrative, printed September 7, 2016 (p. 110)
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- Certification of Overpayment, January 23, 2017, (p. 117)
- OIG Overpayment Findings, November 30, 2016 (pp. 118-19)
- Change of Address Form, August 26, 2014 (p. 120)
- [REDACTED] Statement, January 4, 2013 (p. 121)
- [REDACTED] Statement, March 1, 2014 (p. 122)
- [REDACTED] Statement, March 17, 2015 (p. 123)

⁷ The local department exhibits include notices from the DHS prior to July 1, 2017 when the DHS was referred to as the Department of Human Resources.

⁸ The year for the February post was not indicated.

- Appellant's driver's license, issued November 18, 2013 (p. 124)
- Social Security cards, June 29, 2000 (p. 125)
- Case Narrative, various dates (pp. 126-29)
- Food Stamp Calculation Worksheets, various dates (pp. 130-43)
- TCA Calculation Worksheets, various dates (pp. 144-54)

The Appellant did not offer any exhibits for admission into evidence.

Testimony

Ms. [REDACTED] and [REDACTED], OIG Investigator, testified on behalf of the local department.

The Appellant did not present any witness testimony.

FINDINGS OF FACT

I find the following facts by clear and convincing evidence:

1. Beginning in 2013, the Appellant moved to [REDACTED] with her husband, Mr. [REDACTED], and her children.
2. On April 11, 2014, Mr. [REDACTED] submitted a signed statement indicating that he paid for the Appellant's residence and made child support payments in the amount of \$250.00 until the parties were divorced or the Appellant acquired full-time employment.
3. On September 16, 2014, the Appellant submitted an Application for Assistance for TCA benefits for herself and her three children. She did not report Mr. [REDACTED] as a member of her assistance unit and did not report his income. She identified Mr. [REDACTED] as an absent parent who was paying child support to the Appellant in the amount of \$230.00 per month.
4. The Appellant signed the September 2014 application and affirmed that the information provided was true, correct, and complete. The application 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.

5. In November 2014, the Appellant posted a photograph of a ring on social media with the statement: "I said yes . . . Again!" (LD Ex. 1 at 85).

6. On December 6, 2014, the Appellant and Mr. [REDACTED] moved from the [REDACTED] residence, after a dispute with the owner of the property based on their failure to pay rent.

7. On March 17, 2015, Mr. [REDACTED] submitted a signed statement indicating that he paid to the Appellant child support in the amount of \$230.00 per month "until the children do not attend school." (LD Ex. 1 at 123).

8. On March 20, 2015, the Appellant completed a Recertification Application for herself and three children, reporting no income. At that time, the Appellant listed her residential address as [REDACTED] and a mailing address of [REDACTED]. On the application, she also provided the [REDACTED] address as a residential address and noted: "Displaced while owner makes repairs." (LD Ex. 1 at 54). She did not list Mr. [REDACTED] as a member of the assistance unit and did not report his income.

9. On August 28, 2015, the Appellant completed a Recertification Application for herself and two children. At that time, the Appellant listed her residential address as [REDACTED] [REDACTED].

10. On February 24, 2016, the Appellant submitted a Mail-In Benefits Review Form and reported no changes to the household composition or income.

11. At all times relevant to this matter, the Appellant's and Mr. [REDACTED]'s addresses of record with the MVA were the same--[REDACTED].

12. Between 2013 and 2016, Mr. [REDACTED] was employed by [REDACTED] and earned income as follows:

2013	\$6,580.61
2014	\$82,386.06

2015	\$93,291.75
2016	\$41,931.21

The Appellant did not report Mr. [REDACTED]'s income to the local department.

13. As of June 16, 2016, Mr. [REDACTED]'s address of record with his employer ([REDACTED]) was [REDACTED].

14. Based on the information provided by the Appellant in her Applications for Assistance, the Appellant was overpaid TCA benefits in the amount of \$13,404.86. (LD Ex. 1 at 117).

DISCUSSION

COMAR 07.03.03 sets forth the requirements for an assistance unit⁹ 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.

The local department contends that the Appellant failed to report material information in her TCA applications and misrepresented information regarding her responsibilities pertaining to child support enforcement. As such, it maintains that the Appellant received benefits for which she was not eligible and has committed an IPV of the TCA program. 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).

⁹ 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."¹⁰ 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 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. On May 10, 2022, I called the Appellant at her telephone number of record. Upon answering the call, the Appellant stated the following and then ended the telephone call:

Out of my own legal fear and right, without representation, I'm not willing to speak nor willing to continue because I did put in writing that I wanted dismissed and I did at the last meeting stress to you legally it's not your right or what you should be doing is correcting charges that were incorrectly filed by the other party. So, this is what's gonna happen. I want a lawyer. These charges have been brought up in the past. You're allowing them for the third time to be brought up and that also seems illegal. So, until legal representation like I stated the first time that this was too soon to be put on the docket, which I did on docket state that. I'm not gonna wait for you to proceed forward. This is being done incorrectly and not the way it is advised on the books. I don't know what else to say to you.

Considering the Appellant's statements prior to terminating the telephone call, I found the Appellant's action to constitute a failure to appear for the hearing. As such, I held the hearing in the Appellant's absence. COMAR 28.02.01.23A.

¹⁰ 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).

Motion to Dismiss

The Appellant argued that the hearing should be dismissed because the case was already heard and decided in criminal court and at the OAH. After the Appellant left the hearing, I allowed Ms. [REDACTED] to respond to the Motion. She explained that criminal charges were filed against the Appellant, which ultimately were nolle prossed. She argued that the criminal charges were separate from the IPV cases, and had no bearing on the cases at the OAH. Further, she stated that no other IPV cases have been brought against the Appellant at the OAH. The record fails to support the Appellant's contentions.

The OAH's Rules of Procedure provide for consideration of a Motion to Dismiss under COMAR 28.02.01.12C, which provides:

C. Motion to Dismiss. Upon motion, the [Administrative Law Judge (ALJ)] may issue a proposed or final decision dismissing an initial pleading that fails to state a claim for which relief may be granted.

In considering a motion to dismiss, an administrative law judge may not go beyond the "initial pleading," defined under COMAR 28.02.01.02B(9) as "a notice of agency action, a request for a hearing on an agency action, or any other transmittal that initiates a proceeding scheduled by the Office."

The Appellant has failed to demonstrate that dismissal is warranted in this case. The Appellant had two prior cases before the OAH in 2016 which involved the Appellant's challenge of a reduction in Supplemental Nutrition Assistance Program benefits (Case No. [REDACTED]) and the closure of her TCA case (Case No. [REDACTED]). Neither case resulted from an allegation of an IPV. Both cases were resolved in the local department's favor. Further, the criminal charges, while based on the same conduct, are not related to the administrative cases

and have no bearing on my decision in these matters. On this record, a dismissal of the Appellant's cases is not appropriate.

Merits

At the ADH, the local department bears the burden of proving an IPV by clear and convincing evidence. COMAR 07.01.04.12C(1). 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)). 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 of the TCA program.

While residing at [REDACTED] and [REDACTED], the Appellant failed to report Mr. [REDACTED] as a member of the assistance unit. She did not include his income on the applications for benefits and reported no income. The evidence supports a conclusion that Mr. [REDACTED] was living with the Appellant and the children between 2013 and 2016 and earning income at this time. Moreover, the Appellant identified Mr. [REDACTED] as an absent parent and informed the local department that she had pursued child support from him, when she did not. Thus, the information reported by the Appellant on her Applications for Assistance was incomplete and incorrect.

The Appellant attested under the penalty of perjury that the information provided on the applications was true, correct, and complete. She confirmed in these applications that she read and understood her rights and responsibilities under the TCA program. Specifically, she

acknowledged that she understood the fraud warning and the requirement to report changes to the local department in a timely manner. The local department provided ample, unrefuted evidence that the Appellant failed to correctly report the composition of her assistance unit or to disclose Mr. [REDACTED]'s income. Therefore, I conclude that the local department has established, by clear and convincing evidence, that the Appellant purposefully failed to disclose Mr. [REDACTED] as a member of the assistance unit, and she received TCA benefits without inclusion of that income in the eligibility calculation. Moreover, she identified Mr. [REDACTED] as an absent parent and reported seeking child support from him, which was untrue. Based on this evidence, the Appellant's assistance unit was not eligible for benefits. I find that the Appellant made false statements, concealed material information, and misrepresented facts for the purpose of establishing or maintaining her household's eligibility for TCA benefits. COMAR 07.03.10.02B(5). The Appellant committed an IPV of the TCA Program. This is the Appellant's first TCA violation.

CONCLUSIONS OF LAW

I conclude, as a matter of law, that the Appellant's case should not be dismissed because the issue raised in this case has not already been decided by the OAH in a previous decision. COMAR 28.02.01.12C.

I further 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 TCA program. 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's motion to dismiss be **DENIED**.

I further **ORDER** that the Appellant is found to have committed an Intentional Program

Violation of the Temporary Cash Assistance Program. Therefore, the local department shall impose a one-year disqualification for a first violation.

Signature Appears on Original

June 27, 2022

Date Decision Issued

Michelle W. Cole
Administrative Law Judge

MWC/dlm
#199201

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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (*Emailed*)
[REDACTED]

[REDACTED] (*Emailed*)
[REDACTED]

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