

[REDACTED]

* BEFORE LEIGH WALDER,

[REDACTED]

* AN ADMINISTRATIVE LAW JUDGE

[REDACTED]

* OF THE MARYLAND OFFICE

v.

* OF ADMINISTRATIVE HEARINGS

[REDACTED],

*

APPELLANT

* OAH No.: DHS-[REDACTED]-03-23-13801

* * * * *

DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
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CONCLUSIONS OF LAW
ORDER

STATEMENT OF THE CASE

On May 2, 2023, the [REDACTED] (local department), on behalf of the Department of Human Services (DHS), Office of the Inspector General (OIG), notified [REDACTED] (Appellant¹) that it believed the Appellant had committed an Intentional Program Violation (IPV) of the Supplemental Nutrition Assistance Program (SNAP) 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) (2022).² 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

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 The federal regulations that apply to the SNAP are found in Title 7 of the Code of Federal Regulations (C.F.R.). All citations to the C.F.R. are to the 2022 print volume published by the Office of the Federal Register National Archives and Records Administration.

ADH. Accordingly, on May 24, 2023, the local department referred the matter to the OAH for a hearing.

On May 25, 2023, the OAH sent a Notice of IPV Hearing (Notice) to the Appellant by United States mail to the Appellant's two addresses on file with the local department.³ The Notice advised the Appellant that an ADH would be held on the Webex videoconference platform (Webex) on July 3, 2023, at 11:00 a.m. Code of Maryland Regulations (COMAR) 07.01.04.10E(1); COMAR 28.02.01.20B(1)(b). The United States Postal Service did not return the Notice to the OAH, and the Appellant never requested a postponement of the ADH. *See* COMAR 28.02.01.16.

On July 3, 2023, at 11:00 a.m., I was prepared to hold the hearing as scheduled. *Id.* § 273.16(e); *see also* COMAR 07.01.04.21B. [REDACTED], Assistant Supervisor for Family Investment Administration, appeared on behalf of the local department. The Appellant did not appear for the hearing at 11:00 a.m. I waited until 11:15 a.m. to afford the Appellant additional time to appear; however, the Appellant never signed into Webex for the hearing. After determining that the Notice was sent to the Appellant's addresses of record and finding that the Appellant had not requested a postponement, I found that the Appellant failed to appear for the ADH. COMAR 28.02.01.05A, C; COMAR 07.01.04.11C(1); *see also Md. State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 447 (2015). The Appellant did not notify the OAH of any change of mailing address. COMAR 28.02.01.03E. As such, I proceeded to conduct the ADH.⁴

³ The local department forwarded the OAH two addresses it had on record for the Appellant. One address was in [REDACTED], Maryland. Another address was in [REDACTED], [REDACTED].

⁴ 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) "[s]hall determine whether proper notice of the hearing was sent and whether the appellant requested a postponement." 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 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). I received no request to reopen the record.

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 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 – Referral, created October 19, 2021 (pp. 1-3)

LD Ex. 2 – Eligibility Summary, undated (p. 4)

LD Ex. 3 – Application, dated September 23, 2020 (pp. 5-21)

LD Ex. 4 – Witness Statement, dated March 7, 2022 (p. 22)

LD Ex. 5 – Consent Order for Custody and Child Support, dated [REDACTED] 2019 (pp. 23-30); Consent Order for Custody, Visitation and Child Support, dated [REDACTED], 2021 (pp. 31-39); Docket history from Maryland Case Search, undated (pp. 40-46)

LD Ex. 6 – SNAP Transactions, spanning January 1, 2019, through December 8, 2021 (pp. 47-113)

LD Ex. 7 – Beacon printout, undated (p. 114)

LD Ex. 8 – Letter from the local department to the Appellant, dated May 2, 2023 (pp. 115-119)

LD Ex. 9 – Letter from the local department to the Appellant, dated May 2, 2023 (pp. 120-124)

LD Ex. 10 – ADH pamphlet, revised August 2018 (pp. 125-126)

LD Ex. 11 – Electronic Benefit Transfer (EBT) flyer, undated (p. 127)

The Appellant did not appear and, thus, did not offer any exhibits into evidence.

Testimony

██████████, Investigator, OIG, testified on behalf of the local department.

The Appellant was not present to testify or offer any witness testimony.

FINDINGS OF FACT

I find the following facts by clear and convincing evidence:

1. The Appellant is the mother of a child, ██████.⁵ ██████'s father is ████████████████████.
2. On ██████████ 2019, the Appellant reached a custody agreement with Mr. ██████████ that was placed on record in the Circuit Court for ██████████ (Court).
3. The Court memorialized the custody agreement in writing in a Consent Order for Custody and Child Support (Consent Order #1).
4. Consent Order #1 set out that the Appellant and Mr. ██████████ would have joint legal custody of ██████.
5. Consent Order #1 sets out the following physical custody arrangement of ██████. between the Appellant and Mr. ██████████:

ORDERED, that per agreement placed on the record, **during the school year**, the parties shall adhere to the following four-week schedule: for the first three weeks of the school year, [Mr. ██████████] will have [█████.] in his care and custody from after school on Monday until Friday morning with drop-off at school, and [the Appellant] shall have [█████] in her care and custody from after school on Friday until Monday with drop-off at school. On the fourth week of the school year, [the Appellant] shall have [█████] in her care and custody from after school on Monday until Thursday morning with drop-off at school, and [Mr. ██████████] shall have [█████] in his care and custody from after school on Thursday until Monday with drop-off at school. This four-week schedule shall continue throughout the school year.

.....
ORDERED, that per agreement as placed on the record, **during the summer for the months of July and August each year**, [Mr. ██████████] shall have [█████] in his care and custody from the 1st to the 15th of each month, and [the Appellant]

⁵ To protect the minor child's privacy, I have used initials to identify the Appellant's child.

shall have [REDACTED] in her care and custody from the 15th through the end of each month.⁶

(LD Ex. 5, pp. 25-26) (emphasis in original).

6. On September 23, 2020, the Appellant filed an application with the local department for SNAP benefits for a household of two, which included herself and [REDACTED]

7. The Appellant signed the application for SNAP benefits 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. Based upon the September 23, 2020, SNAP application, the Appellant received SNAP benefits for a household of two.

9. On [REDACTED] 2021, the Appellant reached another custody agreement with Mr. [REDACTED] that was placed on record with the Court.

10. The Court memorialized the custody agreement in writing in a Consent Order for Custody, Visitation and Child Support (Consent Order #2).

11. Consent Order #2 set out that the Appellant and Mr. [REDACTED] would have joint legal custody of [REDACTED]

12. Consent Order #2 sets out the following physical custody arrangement of [REDACTED] between the Appellant and Mr. [REDACTED]:

[The Appellant] will be relocating to [REDACTED] in the near future, and following the signing of [Consent Order #2], the minor child, [REDACTED] shall be in the primary physical custody of [Mr. [REDACTED]] and [Mr. [REDACTED]'s] address shall be used as [REDACTED]'s primary address for educational purposes, per agreement as placed on the record; and it is further

ORDERED, that per agreement as placed on the record, beginning March 1, 2021, and during the school year, [REDACTED] shall be in the care of [the Appellant] at

⁶ Consent Order #1 also contained a holiday schedule designating various physical custody arrangements of [REDACTED] during the holidays.

least one weekend per month, and she shall request specific dates for weekend visitation (up to two weekends per month) by the fifth (5th) of each month, with [Mr. ██████████] responding within two days to [the Appellant's] request[.]

(LD Ex. 5, p. 32) (emphasis in original).

13. The Appellant continued to receive SNAP benefits for a household of two until November 30, 2021.

14. Beginning April 1, 2021, the Appellant began using her SNAP EBT card in both ██████████ (██████) and Maryland (MD), as follows:

- a. April 2021: two purchases in ██████████ and ten purchases in MD;
- b. May 2021: two purchases in ██████████ and six purchases in MD;
- c. June 2021: six purchases in ██████████ and one purchase in MD;
- d. July 2021: two purchases in ██████████ and three purchases in MD;
- e. August 2021: five purchases in ██████████ and three purchases in MD;
- f. September 2021: three purchases in ██████████ and two purchases in MD;
- g. October 2021: ten purchases in ██████████ and no purchases in MD;
- h. November 2021: eight purchases in ██████████ and two purchases in MD.

15. The Appellant has had no prior IPV's of the SNAP.

DISCUSSION

Applicable law

A household's eligibility for participation in the SNAP, and the amount of SNAP benefits, is determined in part by household composition and income. 7 C.F.R. § 273.10; *see also* COMAR 07.03.17.42, .44. The necessary information is provided on the SNAP application. 7 C.F.R. § 273.10; *see also* COMAR 07.03.17.14. A household shall live in the State in which it files an application for participation in the SNAP. 7 C.F.R. § 273.3. 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, .48. Such changes include changes in residence. *Id.* § 273.12(a)(1)(iii).

A household's composition includes a group of individuals who live together and customarily purchase food and prepare meals together for home consumption. 7 C.F.R. § 273.1(a)(3); *see also* COMAR 07.03.17.03A(3). For unusual household situations, including families with children and court ordered custody arrangements, the local department determines whether a child is a member of a SNAP household as follows:

(a) When the custody arrangement between the parents is uneven, the child would be included in the household that provides the child with the majority of his or her meals.

(b) When there is an unequal custody arrangement and the children eat fifty-percent of their meals with each parent, the case manager must decide which household should include the child. If both parents apply and cannot agree on which household will include the child, the case manager will resolve the issue by including the child in the household that applied first.

SNAP Manual § 100.3B(3) (revised July 2022).⁷

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; the 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

⁷ The SNAP Manual is promulgated by the Secretary of the DHS and is available to the public on the DHS's website, <https://dhs.maryland.gov/supplemental-nutrition-assistance-program/food-supplement-program-manual>.

substantiate the decision that the individual has committed an IPV of the SNAP. 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 Supreme Court of Maryland⁸ 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 Cnty. 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’s position

The local department argued that the Appellant committed an IPV by misrepresenting her household composition by including █████ on the SNAP application and for failing to report a reduction in custody as shown in Consent Order #2. The local department also argued that the Appellant committed an IPV by failing to notify the local department that she moved from Maryland to █████.

⁸ Effective December 14, 2022, the Maryland Court of Appeals was renamed the Supreme Court of Maryland.

Analysis

Household composition at the time of application

For the reasons that follow, I cannot find that the Appellant committed an IPV of the SNAP by misrepresenting her household composition when she applied for SNAP benefits on September 23, 2020. When the Appellant applied for SNAP benefits on September 23, 2020, she was asked to provide information about her household composition. The Appellant answered that her household consisted of herself and [REDACTED] (LD Ex. 3). At the time of application, Consent Order #1 was in effect. Consent Order #1 included an uneven custody arrangement whereby – for three out of the four weeks during the school year – Mr. [REDACTED] had physical custody of [REDACTED] on Mondays, Tuesdays, Wednesdays, and Thursdays, and the Appellant had physical custody of [REDACTED] on Fridays, Saturdays, and Sundays. For the fourth week, Mr. [REDACTED] would have physical custody of [REDACTED] on Thursday, Friday, Saturday, and Sunday, and the Appellant would have physical custody of [REDACTED] on Monday, Tuesday, and Wednesday. Through Consent Order #1, Mr. [REDACTED] had physical custody of [REDACTED] roughly sixty percent of the time.

As set out in the SNAP Manual: “[w]hen the custody arrangement between the parents is uneven, the child would be included in the household that provides the child with the majority of his or her meals.” SNAP Manual § 100.3B(3)(a) (revised July 2022). I note that the SNAP Manual sets out the DHS’s policy regarding the SNAP and the language contained within section 100.3B(3)(a) of the SNAP Manual is not mirrored in the State or Federal regulations pertaining to the SNAP. Therefore, it was a technical policy violation for the Appellant to include [REDACTED] on the SNAP application filed September 23, 2020. However, there is a difference between a technical policy violation of the SNAP and a IPV of the SNAP.

As stated above, 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; the 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). The SNAP application itself lacks any guidance that would assist an applicant, such as the Appellant, in determining whether it was appropriate to include a child in a shared custody arrangement as a household member on the SNAP application. Although the SNAP Manual provides guidance to local departments relating to the interpretation of State and federal regulations pertaining to the SNAP, there is no evidence that the Appellant had any knowledge of the guidance provided in section 100.3B(3)(a) of the SNAP Manual, and there is no requirement that the Appellant review the SNAP Manual prior to applying for SNAP benefits.

Even if the local department had shown by clear and convincing evidence that the Appellant misrepresented her household composition, the analysis does not end there. The language of the applicable statutes and regulations establishes a requirement that to prove an IPV, there must be a showing that the Appellant acted with the general intent⁹ to make a false statement or to withhold facts, or acted with the specific intent¹⁰ of committing a violation of program rules for the purpose of using, presenting, transferring, acquiring, receiving, or possessing program benefits. 7 U.S.C.A § 2015(b).

⁹ Intent is “a state of mind wherein the person knows and desires the consequences of his act.” *Barron’s Law Dictionary*, 240 (2d ed, 1984).

¹⁰ In *Bible v. State*, 411 Md. 138, 158 (2009), the Court 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...” (citation and quotation marks omitted). *See also Cohen v. Metropolitan Life Ins. Co.*, 444 S.W. 2d 498, 505 (Missouri 1969) (Discussing scienter in the context of a fraud case, the Court noted that the misrepresentation or omission of material fact must have been done “to deceive or with what is recognized as the legal equivalent to a deliberately fraudulent intent to deceive”).

Regarding the element of proof of the Appellant's intent to mislead or intent to violate a program rule so that she could obtain more SNAP benefits than she was entitled to receive, the local department has not met its high burden. There is no weighty or persuasive evidence from which I can infer the Appellant's mental state -- intent. Reviewing the evidence presented by the local department, I cannot find, by clear and convincing evidence, that the Appellant made an intentional false or misleading statement or misrepresentation on her SNAP application for the purpose of using, presenting, transferring, acquiring, receiving, or possessing SNAP benefits. 42 U.S.C.A. § 2015(b).

Household composition after Consent Order #2

After Consent Order #2, the Appellant's physical custody of [REDACTED] drastically decreased where she only had physical custody of [REDACTED] up to two weekends per month. The local department asserts that the Appellant committed an IPV by failing to report the change in custody and by receiving SNAP benefits for a household of two, from March through November 2021, when [REDACTED] was not a regular member of her household.

Here, the local department's case rests on the allegation that the Appellant intentionally concealed or withheld the change in custody after Consent Order #2, so she could continue to receive SNAP benefits for a household of two. This allegation is dubious. While a significant change in the custody arrangement occurred after Consent Order #2, the Appellant still retained joint legal custody and access to [REDACTED] after the Consent Order was entered; she did not lose custody [REDACTED]

Again, the SNAP application the Appellant filed on September 23, 2020, does not include information regarding the percentage of time an individual must spend in the home in order to be listed as a member of a household and does not inform the Appellant about how to manage changes in custody arrangements during a benefits period. (LD Ex. 3). The local department did

not produce any testimony or other evidence that the Appellant received this information from another source. Moreover, the application contains no warning that the failure to timely report changes to household composition would result in a SNAP violation or the loss of benefits. (*Id.*) Neither the SNAP application, the Maryland regulations, nor the SNAP Manual provide clear guidance on when this change in household composition needed to be reported to the local department. (LD Ex. 3); COMAR 07.03.17.47, .48; SNAP Manual § 420 (revised October 2021). Indeed, the Maryland regulations and the SNAP Manual indicate that this type of change must be reported at the time of recertification, not before. COMAR 07.03.17.47, .48; SNAP Manual § 420.2 (revised October 2021).¹¹ The local department did not produce any recertification application filed after September 23, 2020.

I conclude that the evidence is not clear and convincing that the Appellant intentionally concealed or withheld facts or intentionally committed an act that violated the SNAP or the SNAP regulations. Accordingly, I conclude that the evidence is insufficient for me to find that the Appellant committed an IPV of SNAP by failing to inform the local department of the change in custody of █████ as set out in Consent Order #2.

Change in residence

The local department asserts that the Appellant committed an IPV by moving to █████ while still receiving SNAP benefits that were issued in MD and failing to notify the local department about her change in residence. To support the local department's assertion, the local department relies on a witness statement and a spreadsheet setting out the Appellant's SNAP EBT transaction history. (LD Exs. 4 & 6). Neither of these exhibits demonstrate, by clear and

¹¹ SNAP Manual § 420.21G (revised October 2021) gives the following example regarding a household's responsibility to report changes: "**Example 2:** Ms. Smith's daughter moved out of the house in July, but Ms. Smith was not required to report the change until recertification."

██████████ shall not impose a Supplemental Nutrition Assistance Program disqualification against the Appellant.

August 4, 2023
Date Decision Issued

Signature Appears on Original
██
Leigh Walder
Administrative Law Judge

LW/ja
#206669

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.

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[REDACTED]

* BEFORE LEIGH WALDER,

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v.

* OF ADMINISTRATIVE HEARINGS

[REDACTED],

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APPELLANT

* OAH No.: DHS-[REDACTED]-03-23-13801

* * * * *

FILE EXHIBIT LIST

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