

[REDACTED]

* BEFORE DANIA AYOUBI,

[REDACTED]

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE

[REDACTED],

* OF ADMINISTRATIVE HEARINGS

APPELLANT

* OAH No.: DHS-[REDACTED]-03-23-18010

* * * * *

DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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ORDER

STATEMENT OF THE CASE

On May 10, 2023, the [REDACTED] (local department), on behalf of the Department of Human Services (DHS), Office of the Inspector General (OIG), notified [REDACTED] (Appellant) that it believed she 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).¹ 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 ADH. Accordingly, on July 10, 2023, the local department referred the matter to the OAH for a hearing.

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.). Unless otherwise noted, 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.

On July 27, 2023, the OAH mailed a Notice of Hearing to the Appellant at the Appellant's address of record, which advised the Appellant that a remote ADH would be held on August 29, 2023 by video. On August 29, 2023, I held the remote hearing as scheduled. *Id.* § 273.16(e); *see also* COMAR 07.01.04.21B. [REDACTED], Family Investment Specialist III, represented the local department. The Appellant was self-represented.

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 & Supp. 2023); 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 Referral Packet and Summary offered by the local department:

- LD Ex. 1 - Summary, undated, with the following attachments:
- Waiver of ADH, May 10, 2023
 - Advance Notice of ADH, May 10, 2023
 - DHS IPV ADH pamphlet, undated
 - Waiver of ADH to the Appellant's alternate address, May 10, 2023
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 - Copy of envelope to the Appellant's alternate address, undated
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 - Copy of envelope to the Appellant's alternate address returned to the local department, May 17, 2023
 - Correspondence from the DHS, OIG to the local department, November 4, 2021
 - Summary of findings from the DHS, OIG to the local department, undated

- Department of Human Resources (DHR)³ myDHR Program Application, April 12, 2019
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- Final Protective Order, Circuit Court for ██████ County, ██████, 2020
- Complaint for Custody, Circuit Court for ██████ County, ██████, 2020
- Handwritten custody agreement, ██████ 2020
- Order, Circuit Court for ██████ County, ██████, 2020
- Order, Circuit Court for ██████ County, ██████ 2022
- Email correspondence between the local department and ██████ ESS Customer Call Center QA Unit, December 5 and 6, 2019
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- Fraud complaint and email correspondence from OIG, February 23 and March 17, 2021

I admitted the following exhibit offered by the Appellant:

App. Ex. 1 - Certified true copy of consent order, Circuit Court for ██████ County, ██████, 2023

³ Prior to July 1, 2017, the DHS was known as the Department of Human Resources.

Testimony

The local department's representative read the referral summary and testified.

The Appellant testified and offered no witnesses.

FINDINGS OF FACT

I find the following facts by clear and convincing evidence:

1. On April 12, 2019, the Appellant completed an online application seeking SNAP benefits and temporary cash assistance. The Appellant listed herself as the head of household and indicated that she was pregnant with one child, with an expected due date of [REDACTED] 2019.

The Appellant, under penalty of perjury, affirmed that the information provided was true, correct, and complete to the best of her ability, belief, and knowledge. The Appellant also checked a box indicating that she had read or printed her rights and responsibilities.

2. On December 1, 2019, the Appellant, the Appellant's child,⁴ and [REDACTED], the father of the Appellant's child (Father), began residing with [REDACTED], the child's paternal grandmother (Grandmother).

3. On December 3, 2019, the Appellant completed an application for assistance, seeking SNAP benefits and medical assistance.⁵ The Appellant listed herself as the head of household and listed her child, with a date of birth of [REDACTED] 2019, as a member of her household. The Appellant, under penalty of perjury, affirmed that the information provided was true, correct, and complete to the best of her ability, belief, and knowledge. The Appellant further acknowledged that she had received a copy of her rights and responsibilities, including the requirements to provide true and complete information. The Appellant was also advised of the penalties for failing to meet these and other requirements.

⁴ To protect the minor's confidentiality, I refer only to "the child."

⁵ The application also included a request for cash assistance, which the Appellant withdrew.

4. Based on the December 3, 2019 application, the Appellant began receiving SNAP benefits.

5. The Appellant received SNAP benefits from January 2020 through February 2021, and May 2021 through May 2022.

6. On [REDACTED], 2020, the Circuit Court for [REDACTED] County issued a final protective order, which the Appellant sought against the Father. At the time, the Appellant no longer resided in the Grandmother's home. The final protective order indicated that, pursuant to a prior order, the child would primarily reside with her father.

7. On [REDACTED], 2020, the Grandmother filed a complaint for custody against the Appellant in the Circuit Court for [REDACTED] County, seeking primary physical and sole legal custody of the child. The Grandmother indicated that at the time, the child lived with her fifty percent of the time and with the Appellant fifty percent of the time.

8. On [REDACTED] 2020, the Appellant, the Father, and the Grandmother entered into a custody agreement, whereby the Appellant and the Father granted to the Grandmother full legal physical custody of the child "until further notice." (LD Ex. 1, p. 97). The custody agreement indicated that the child would reside with her Grandmother, "where she ha[d] legally resided [s]ince December 1st 2019." The agreement permitted the Appellant and the Father the right to visitation with the child as set forth in a previous order.

9. On [REDACTED], 2020, by agreement of the Appellant, Father, and Grandmother, the Circuit Court for [REDACTED] County awarded the Grandmother sole legal and sole physical custody of the child. The Appellant was permitted to have the child in her care and custody from Friday at 5:00 p.m. to Monday at 5:00 p.m.

10. On February 23, 2021, the OIG received a complaint alleging that the child had lived with the Grandmother since December 2019 and that the Grandmother was awarded custody on [REDACTED], 2020.

11. On March 17, 2021, the OIG received two additional complaints alleging that the Appellant had been collecting SNAP benefits for the child though the child had not resided with the Appellant since December 2019.

12. On [REDACTED] 2022, the Circuit Court for [REDACTED] County found there had been a material change in circumstances and ordered that effective [REDACTED], 2022,⁶ the Appellant would have sole legal and sole physical custody of the child. The Grandmother was granted visitation every other weekend.

13. The Appellant has had no prior IPV of the SNAP.

DISCUSSION

Legal Framework

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, .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, .48.

An IPV is an intentionally false or misleading statement or misrepresentation, concealment, or withholding of facts concerning SNAP, or any act that constitutes a violation of 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

⁶ The order incorrectly provides the date of [REDACTED] 2021.

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 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.

Burden of Proof

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 Maryland⁷ 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.

⁷ Effective December 14, 2022, the Maryland Court of Appeals was renamed the Supreme Court of Maryland.

Parties' Positions

The local department argued that the Appellant intentionally included her child on her December 3, 2019 application for SNAP benefits though her child was not a member of the Appellant's household at the time. Accordingly, the local department argued, the Appellant misrepresented her household composition, received SNAP benefits to which she was not entitled, and should face a one-year disqualification from the SNAP.

The Appellant explained that though her child lived with the Grandmother, the Appellant also lived with her child in the Grandmother's home for a period of time. The Appellant offered that after she left the Grandmother's home, she gave the SNAP benefits she received to the Grandmother to care for her child. The Appellant argued that she was unaware that she could not claim her child as a member of her household on her application for SNAP benefits.

Analysis

For the reasons that follow, I conclude that the local department has not met its burden of showing by clear and convincing evidence that the Appellant committed an IPV of the SNAP.

Household composition. COMAR 07.03.17.03 sets forth the definition of a "household" for purposes of the SNAP and states in relevant part:

A household may be composed of any of the following individuals or groups of individuals:

....

(2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others;

(3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

....

D. Nonhousehold Members.

(1) Nonhousehold members who are otherwise eligible may participate in the Program as separate households.

(2) The local department may not consider the following individuals residing with a household as household members in determining the household's eligibility or allotment:

....

(c) Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household.

COMAR 07.03.17.03A, D.

The SNAP Manual further explains how to determine a household's composition in cases of joint custody arrangements.⁸

(a) When the custody arrangement between 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 equal custody arrangement and the children eat 50 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.

Note: The case manager must ensure that the child is included in only one household.

SNAP Manual § 100.3B(3) (revised July 2023).

In this case, the local department presented evidence to demonstrate that the child began living with the Grandmother on December 1, 2019. Just two days later on December 3, 2019, the Appellant submitted an application seeking SNAP benefits in which she listed herself as the head of household and listed her child as a member of her household. Therefore, the local department argued, at the time of the Appellant's December 3, 2019 application for SNAP benefits, the child was not a member of the Appellant's household.

The Appellant does not contest that the child began living with the Grandmother on December 1, 2019. However, the Appellant credibly testified that she herself along with the Father resided with their child at the Grandmother's home. The Appellant indicated that she continued living at the Grandmother's home until the beginning of 2020, when she was no longer in a relationship with the Father. Though the Appellant gave no specific timeline, the evidence

⁸ The SNAP Manual is promulgated by the Secretary of Human Services to provide guidance to the local departments of social services in interpreting the rules and regulations of the SNAP. It is the settled policy of the DHS and I am bound by it to the same extent the DHS would be bound if hearing the instant case. Md. Code Ann., State Gov't § 10-214(b) (2021). The SNAP Manual is available to the public on the DHS's website, <https://dhs.maryland.gov/supplemental-nutrition-assistance-program/food-supplement-program-manual>.

demonstrates that at least as of [REDACTED] 2020, when the Appellant received a final protective order against the Father, the Appellant no longer lived at the Grandmother's home. At that time, the child continued primarily residing with her Father pursuant to another court order.⁹

The record is unclear regarding the child's custody arrangement after that time. Beginning in August 2020, the evidence demonstrates that the child partly resided with the Appellant, though when precisely that arrangement began, the record is again unclear. On [REDACTED] 2020, the Grandmother completed a complaint for custody in which she indicated that the child resided with her and the Father fifty percent of the time and with the Appellant fifty percent of the time. And in [REDACTED] 2020, the evidence demonstrates that though the Grandmother was awarded sole legal and sole physical custody of the child, the Appellant was permitted to have the child in her care and custody for seventy-two hours weekly (from Friday at 5:00 p.m. to Monday at 5:00 p.m.).

Based on this evidence, I cannot conclude that the local department sustained its burden by clear and convincing evidence to establish that the Appellant committed an IPV of the SNAP by including her daughter as a member of her household on the December 3, 2023 SNAP application. In isolation, the local department's evidence would suggest that the child resided with the Grandmother beginning December 1, 2019 and into 2020, when the Appellant received SNAP benefits for a household including the child. However, the Appellant's testimony established that she herself resided in the Grandmother's home with her child and that the Grandmother suggested that the Appellant continue to list the child on the Appellant's SNAP application so as not to disrupt the Grandmother's receipt of SNAP benefits for other children. The local department failed to account for whether the Appellant and the child were nonhousehold members who were otherwise eligible to participate in the SNAP as a separate

⁹ The Final Protective Order dated [REDACTED], 2020 references an order number [REDACTED], which is not contained in the exhibits.

household during that time. COMAR 07.03.17.03D. The record is also unclear regarding the child's custody arrangement after the Appellant no longer resided in the Grandmother's home in early 2020 until ██████ 2020, at which time the evidence suggests that the Appellant evenly shared custody of the child. Nor did the local department argue that section 100.3B(3) of the SNAP Manual would operate to limit the Appellant's ability to include her child as a member of her household.

Even if the local department had shown by clear and convincing evidence that the Appellant misrepresented her household composition on the December 3, 2019 application in violation of the applicable SNAP statutes and regulations, I am further required to determine whether the local department has met its burden to demonstrate, by clear and convincing evidence, that the Appellant acted with the requisite intent. An IPV, as its name suggests, is not a strict liability offense and requires the Appellant to have acted with intent at the time of the conduct at issue. 7 C.F.R. § 273.16(c), (e)(6); COMAR 07.03.17.02B(15); *see* 7 U.S.C.A.¹⁰ § 2015(b)(1) (2008) (intent is an element of a SNAP IPV). The regulations require that the Appellant have acted with the general intent¹¹ to make a false statement or withhold facts, or the specific intent¹² of committing a violation of program rules for the purpose of receiving program benefits. *Id.*

Even assuming that the Appellant misrepresented her household composition in violation of the SNAP rules, on this record, I cannot find that the local department has sustained its burden to demonstrate that the Appellant intentionally did so. The Appellant offered that she claims her

¹⁰ United States Code Annotated.

¹¹ “[I]ntent is the mental resolution or determination to do [an act].” *Intent*, Black’s Law Dictionary (11th ed. 2019).

¹² In *Bible v. State*, the Supreme Court of Maryland explained that specific intent:

[I]s 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.

411 Md. 138, 158 (2009) (internal citation and punctuation marks omitted).

child on her taxes as a dependent and did not understand that she could not include her child as a member of her household for purposes of the SNAP. The Appellant explained that she did what she needed to do to support her child and that if she had known she would get in trouble for getting benefits for her child and giving it to the Grandmother, she would have called the local department to explain that her child was not in her care. The Appellant explained that she provided the SNAP benefits she received to the Grandmother in order to support the needs of her child; however, the Appellant argued that she was unaware that was against the law. Based on this record, the evidence does not support a finding by the heightened clear and convincing standard that the Appellant acted with the general intent to make a false statement or withhold facts, or the specific intent of committing a violation of program rules for the purpose of receiving SNAP benefits.

For these reasons, I conclude that the local department has not met its burden of showing by clear and convincing evidence that the Appellant committed an IPV of the SNAP.¹³

CONCLUSION OF LAW

I conclude, as a matter of law, that the local department has not shown by clear and convincing evidence that the Appellant committed an 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).

¹³ The local department offered evidence to suggest that the Appellant was a recipient of SNAP benefits in both Maryland and ██████, which could result in a ten-year disqualification from the SNAP if the Appellant made fraudulent statements with respect to her residence to receive multiple SNAP benefits simultaneously. 7 C.F.R. § 273.16(b)(5) and COMAR 07.03.10.08B(4). However, the local department declined to make that argument at the hearing. Nor did the local department's advance notice to the Appellant indicate that the local department sought to disqualify the Appellant on this basis.

ORDER

I **ORDER** that the Appellant is found to have not committed an Intentional Program Violation of the Supplemental Nutrition Assistance Program. Therefore, the [REDACTED] shall not impose any disqualification from the Supplemental Nutrition Assistance Program against the Appellant.

October 18, 2023
Date Decision Issued

Signature Appears on Original

Dania Ayoubi
Administrative Law Judge

DLA/ckc
#207472

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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