

[REDACTED]

* BEFORE SHA'DONNA M. OSBORNE,

[REDACTED]

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

v.

* OF ADMINISTRATIVE HEARINGS

[REDACTED]

*

APPELLANT

* OAH No.: DHS-[REDACTED]-58-23-32320

* * * * *

DECISION

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

STATEMENT OF THE CASE

On June 21, 2023, the [REDACTED] (the local department), on behalf of the Department of Human Services (DHS), notified the Appellant¹ that it believed she committed an Intentional Program Violation (IPV) of the Temporary Cash Assistance Program (TCA) administered by the Family Investment Administration (FIA).² The local department informed the Appellant that she could waive her right to an Administrative Disqualification Hearing (ADH) and accept a disqualification from SNAP and TCA.

The Appellant gave permission for the local department representative to sign her name on the waiver of an ADH for both SNAP and TCA; however, the local department representative

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 notification also stated that the Appellant allegedly committed an IPV of Supplemental Nutrition Assistance Program (SNAP) program. However, the Administrative Disqualification Hearing (ADH) before me pertained solely to an alleged IPV of TCA benefits.

inadvertently failed to check a box on the waiver form which would have indicated that the disqualification pertained to both SNAP and TCA.³ The local department reached out to the Appellant and sought to obtain the Appellant's permission to amend the ADH waiver form, but attempts to reach the Appellant were unsuccessful. The local department did not have any subsequent authorization from the Appellant to waive her right to an ADH on the issue of an IPV for TCA.

Accordingly, on December 8, 2023, the local department referred the matter to the Office of Administrative Hearings (OAH) for an ADH. After receiving the referral, the OAH scheduled a hearing and notified the Appellant by mail at the Appellant's address of record.

On January 10, 2024, I held a hearing by video. COMAR 07.01.04.10E; COMAR 28.02.01.20B(1)(b). [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 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 & Supp. 2023); 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?

³ The local department representative who executed the form on behalf of the Appellant, with the Appellant's permission, left employment with DHS and, and therefore, was no longer available to amend the form.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the Referral Packet with the following pre-marked exhibits offered by the local department:

LD Ex. 1 - Department of Human Resources (DHR)⁴ Findings, by Investigator [REDACTED], undated, pp. 1-3

LD Ex. 2 -

- Client Participation History, Benefit History Listing and Notice of Intent Screens, undated, pp. 4-58
- Application for SNAP benefits, November 29, 2017, pp. 59-72
- Application for TCA benefits, June 18, 2018, pp. 73-86
- Application for TCA benefits, August 3, 2018, pp. 87-94
- Application for SNAP benefits, December 27, 2018, pp. 95-101
- Application for SNAP benefits, June 15, 2019, pp. 102-117
- Maryland Automated Benefits State of Maryland Wage Inquiry (MABS), pp. 118-125
- Application for tenancy, January 30, 2018, pp. 126-128
- Residential lease between Appellant and Mr. [REDACTED], (the Co-Parent) (collectively the Tenants) and [REDACTED] (Landlord), February 18, 2018 and June 18, 2018, pp. 129-133
- Notice of Complaint, [REDACTED] v. Appellant, Case No. [REDACTED], District Court for [REDACTED], Maryland, [REDACTED], 2019, p. 134
- Notice of Judgment, [REDACTED] v. Appellant, Case No. [REDACTED], District Court for [REDACTED], Maryland, [REDACTED], 2019, p. 135
- Notice of Complaint Summons- [REDACTED] v. Appellant, Case No. [REDACTED], District Court for [REDACTED], Maryland, [REDACTED], 2019, p. 136
- Notice of Judgment- [REDACTED] v. Appellant, Case No. [REDACTED], District Court for [REDACTED], Maryland, [REDACTED] 2019, p. 137
- Notice of Judgment- The Co-Parent v. Appellant, Case No. [REDACTED], District Court for [REDACTED], Maryland, [REDACTED], 2019, p. 138
- Photo of front of the Co-Parent's Driver's License, issue date [REDACTED], 2017, p. 139
- Photo of front of Appellant's Driver's License, issue date [REDACTED], 2017, p. 140
- Driving Record for the Co-Parent, February 10, 2020, p. 141-142
- IPV Waiver Form, June 21, 2023, pp. 143-154
- ADH Pamphlet, undated, pp. 155-160
- Electronic Disqualification Recipient System, undated, pp. 161-168

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

⁴ On July 1, 2017, the Department of Human Resources changed its name to the Department of Human Services.

Testimony

██████████, Family Investment Specialist III for the DHS, testified on behalf of the local department.

The Appellant failed to appear and therefore, did not testify or offer other witnesses.

FINDINGS OF FACT

I find the following facts by clear and convincing evidence:

1. The Appellant has four children. Mr. ██████████, (the Co-Parent), is the father of three of the Appellant's four children.⁵

2. On January 30, 2018, the Appellant and the Co-Parent submitted an application for tenancy (tenancy application) to occupy the property located on ██████████ in ██████████, Maryland (██████████).

3. In the tenancy application, the Appellant and the Co-Parent listed their current address on ██████████ in ██████████, Maryland (██████████) and indicated that they were seeking tenancy because the lease at the ██████████ property had expired.⁶ The tenancy application also indicated that the Co-Parent had been working for ██████████ for fourteen years.

4. On February 7 and 8, 2018, the Appellant and the Co-Parent respectively signed a residential lease agreement with Mr. ██████████, (the landlord), for a month-to-month, commencing on February 1, 2018, and ending on June 15, 2018, for the ██████████ property. The lease was renewed on June 16, 2018 for an additional unknown term and signed by the same parties. The lease agreement identified the Appellant and the Co-Parent as the tenants and occupants, and it listed four minor children as additional occupants.

⁵ The Co-Parent shares a name with one of the minor children that he has in common with the Appellant. This child's name appears on the applications at issue in this case but does not refer to the Co-Parent. For privacy purposes, his full name is not used.

⁶ Full addresses have been redacted, for privacy purposes.

5. The Appellant and the Co-Parent lived in the same household from at least February 7, 2018 through June 7, 2019. Despite this, the Appellant and had different addresses listed on their drivers' licenses.⁷

6. While living with the Appellant from February 7, 2018 to June 7, 2019, the Co-Parent worked and earned income.

7. The Co-Parent earned wages from [REDACTED] from January 5, 2018 through March 10, 2019.

8. Further, the Co-Parent earned wages from [REDACTED] from at least January 1, 2019 through January 1, 2020.

9. The Appellant received TCA benefits on various dates from December 5, 2000 through July 5, 2020.

10. On June 18, 2018, and again on August 3, 2018,⁸ the Appellant filed an application for assistance, re-determination and emergency assistance with the local department for TCA benefits for an assistance unit of five (TCA applications).

11. On June 18, 2018, the Appellant signed the TCA application and affirmed under penalty of perjury that the information provided was true, correct, and complete. The TCA 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.

12. On the June 18, 2018 and August 3, 2018 TCA applications, the Appellant only listed herself and her children on her applications. She did not list the Co-Parent on the TCA

⁷ The Appellant's address on her driver's license, issued on October 27, 2017, is the [REDACTED] address. Mr. [REDACTED]'s address on his driver's license, issued on July 14, 2017, is on [REDACTED] in [REDACTED], MD.

⁸ The evidence before me reveals that the Appellant filed an application for combined benefits for SNAP and TCA on August 3, 2018.

applications as a member of the household, nor did she report his income. On the August 3, 2018 TCA application, the Appellant listed the Co-Parent as an absent father.

13. Further, on both TCA applications, the Appellant listed the [REDACTED] property as her address and the [REDACTED] property as her billing address.

14. TCA benefits were issued to the Appellant from February 7, 2018 to June 2019.

15. The local department launched an investigation into the Appellant's TCA applications after the landlord contacted the local department alleging that the Appellant had committed benefit fraud. The landlord reported that the Appellant and the Co-Parent had been living together at the [REDACTED] property that he rented to them, and that he filed an action for eviction against the Appellant and the Co-Parent and had obtained a judgment against them both for unpaid rent in [REDACTED] and [REDACTED] of 2019.

16. Prior to June 2019, the Appellant never reported any changes on the TCA applications that she filed on June 3, 2018 or August 18, 2018.

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 07.03.03.07; 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 rights and responsibilities section of the application form of the application signed by the Appellant on June 3, 2018.

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).

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).

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).

On December 19, 2023, 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. The local department representative attempted to reach the Appellant by phone before the hearing, but was only able to reach the Appellant’s daughter, who purportedly advised that the Appellant was aware of the hearing. I find, therefore, that proper notice of the hearing was provided to the Appellant. COMAR 28.02.01.05A; *see also Md. State Bd. of Nursing v. Sesay*, 224 Md. App. 432, 447 (2015). On January 10, 2024, I conducted the hearing as scheduled.

At the ADH, the local department bears the burden of proving an IPV by clear and convincing evidence. COMAR 07.01.04.12C(1). This standard is more demanding than the

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).

“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 Maryland¹¹ 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)).

The Appellant initially agreed to a waiver of an ADH on the TCA violation, but due to an omission in the local department’s paperwork, and the failure of the local department to reach the Appellant to sign corrected paperwork, the hearing before me was held. 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.

The local department’s representative testified that the local department launched an investigation when it received information from the Appellant’s landlord that the Appellant and the Co-Parent filed a joint application for tenancy, entered into a lease agreement and had been cohabitating together at the [REDACTED] property. Both the Appellant and the Co-Parent signed the lease agreement, identifying themselves as tenants and occupants of the property beginning on February 7, 2018. Further, the local department presented documentation that the landlord filed an eviction action and obtained a judgment against both the Appellant and the Co-Parent for unpaid rent for the property in [REDACTED] of 2019. This uncontested evidence demonstrates that the Appellant and the Co-Parent were living in the same household at least from February 7, 2018, until [REDACTED] 2019. The Appellant and the Co-Parent had different addresses on their drivers’ license records, but I do not find this persuasive that they lived

¹¹ Effective December 14, 2022, the Maryland Court of Appeals was renamed the Supreme Court of Maryland.

separately. The tenancy application and lease agreement with the landlord indicated that they lived at the [REDACTED] property together in February 2018, and thereafter, they lived together at the [REDACTED] property. This was further supported by the landlord filing eviction proceedings against both the Appellant and the Co-Parent in [REDACTED] 2019. The Appellant filled out the TCA applications on June 18, 2018 and again on August 3, 2018, which was during the same time that she and the Co-Parent were living together. However, the Co-Parent was not listed as a member of the assistance unit on these applications.

Moreover, the local department's investigation revealed that the Co-Parent was earning income from [REDACTED] at the time that the Appellant filled out the TCA applications on June 18, 2018 and August 3, 2018. This income was not reported on either TCA application. Additionally, the Co-Parent earned wages from [REDACTED] from at least January 1, 2019 through January 1, 2020. During the period from January 1, 2019 through June 2019, the Appellant did not report any change regarding Mr. [REDACTED]'s income from [REDACTED]

On two occasions, both on June 18, 2018 application and again on August 3, 2018, the Appellant attested that her assistance unit comprised of five members, herself and her four minor children. On the June 18, 2018 application, the Appellant attested under the penalty of perjury that the information provided was true, correct, and complete. The Appellant also confirmed that she understood the fraud warning and the requirement to report changes to the local department in a timely manner. The Appellant has been receiving TCA benefits since December 2000, and is surely aware of the warnings and requirements related to changes on her application.

However, the Appellant did not report any changes and still received benefits from February 2018 to June 2019, while she and the Co-Parent were living together and while the Co-Parent was earning wages.

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 an intentional act, done in order to increase or maintain benefits, and as such, it constitutes an IPV. This is the Appellant's first TCA violation and the local department is seeking only to disqualify the Appellant, who is the individual in the household found to have committed the IPV. COMAR 07.03.10.08C.

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. 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 TCA for one year. COMAR 07.03.10.08B(1).

ORDER

I **ORDER** that the Appellant is found to have committed an IPV of TCA. Therefore, the local department shall impose a one-year disqualification for a first violation.

Signature Appears on Original

March 11, 2024
Date Decision Mailed

Sha'Donna M. Osborne
Administrative Law Judge

SMO/at
#210620

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. Md. Code Ann., State Gov't § 10-222(a), (c) (2021). The petition must be filed within thirty (30) days of the date of this decision. 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]

[Redacted] (Emailed)
[Redacted]

[REDACTED]

* BEFORE SHA'DONNA M. OSBORNE,

[REDACTED]

* AN ADMINISTRATIVE LAW JUDGE

v.

* OF THE MARYLAND OFFICE

[REDACTED],

* OF ADMINISTRATIVE HEARINGS

APPELLANT

*

* OAH No.: DHS-[REDACTED]-58-23-32320

* * * * *

FILE EXHIBIT LIST

LD Ex. 1 - Department of Human Resources (DHR)¹ Findings, by Investigator [REDACTED], undated, pp. 1-3

LD Ex. 2 -

- Client Participation History, Benefit History Listing and Notice of Intent Screens, undated, pp. 4-58
- Application for SNAP benefits, November 29, 2017, pp. 59-72
- Application for TCA benefits, June 18, 2018, pp. 73-86
- Application for TCA benefits, August 3, 2018, pp. 87-94
- Application for SNAP benefits, December 27, 2018, pp. 95-101
- Application for SNAP benefits, June 15, 2019, pp. 102-117
- Maryland Automated Benefits State of Maryland Wage Inquiry (MABS), pp. 118-125
- Application for tenancy, January 30, 2018, pp. 126-128
- Residential lease between Appellant and Mr. [REDACTED], (The Co-Parent) (collectively the Tenants) and [REDACTED] (Landlord), February 18, 2018 and June 18, 2018, pp. 129-133
- Notice of Complaint, [REDACTED] v. Appellant, Case No. [REDACTED], District Court for [REDACTED], Maryland, [REDACTED] 2019, p. 134
- Notice of Judgment, [REDACTED] v. Appellant, Case No. [REDACTED], District Court for [REDACTED] Maryland, [REDACTED], 2019, p. 135
- Notice of Complaint Summons-[REDACTED] v. Appellant, Case No. [REDACTED] District Court for [REDACTED], Maryland, [REDACTED] 2019, p. 136
- Notice of Judgment-[REDACTED] v. Appellant, Case No. [REDACTED], District Court for [REDACTED], Maryland, [REDACTED] 2019, p. 137
- Notice of Judgment- The Co-Parent v. Appellant, Case No. [REDACTED], District Court for [REDACTED], Maryland, [REDACTED] 2019, p. 138
- Photo of front of the Co-Parent's Driver's License, issue date [REDACTED] 2017, p. 139

¹ On July 1, 2017, the Department of Human Resources changed its name to the Department of Human Services

- Photo of front of Appellant's Driver's License, issue date [REDACTED], 2017, p. 140
- Driving Record for the Co-Parent, February 10, 2020, p. 141-142
- IPV Waiver Form, June 21, 2023, pp. 143-154
- ADH Pamphlet, undated, pp. 155-160
- Electronic Disqualification Recipient System, undated, pp. 161-168

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