

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

GEORGIA DEPARTMENT OF	:	
HUMAN SERVICES,	:	
Petitioner,	:	
v.	:	Docket No.:
	:	OSAH-OIS-FSF-██████████-95-Miller
██████████,	:	
Head of Household,	:	Agency Reference No.: ██████████
and	:	
	:	
██████████,	:	
Respondent.	:	

FINAL DECISION

I. Introduction

The Petitioner in this action proposes to administratively disqualify the Respondent/Head of Household from participation in the Supplemental Nutrition Assistance Program ("Food Stamps Program") and to collect an alleged overpayment of food stamps benefits based on an intentional program violation. The evidentiary hearing took place on October 22, 2013.¹ Investigator Sara Dailey of the Petitioner's Office of the Inspector General appeared as the Petitioner's representative. The Respondent/Head of Household, ██████████, appeared *pro se*.

After consideration of the evidence and for the reasons set forth below, the Petitioner's request for administrative disqualification of the Respondent/Head of Household is **GRANTED**, and its decision to recoup an overpayment of \$2,411.00 is **AFFIRMED**.

II. Findings of Fact

1.

The Respondent/Head of Household, ██████████, was a recipient of food stamps benefits in Georgia from January through December 2012. During this time period, he resided continuously at ██████████ address"). (Testimony of Sara Dailey ██████████; Exhibits P-9, P-11, P-12.)

2.

██████████ is married to ██████████. ██████████ have one child, ██████████. ██████████ also has two other children, ██████████ and ██████████, from a previous relationship. (Testimony of ██████████; Exhibit P-11.)

¹ The record was held open until October 25, 2013, for the submission of Exhibit R-2.

3.

On food stamps applications submitted in December 2011 and June 2012, ██████ reported that his household consisted of himself and his three children. Therefore, for the certification period that ran from January through December 2012, his food stamps allotment was calculated based on a four-person household. ██████ did not report that ██████ lived in the home, nor did he report her income during this time period. (Testimony of Ms. Dailey and ██████; Exhibits P-10, P-11, P-12.)

4.

At the hearing, ██████ testified that ██████ had not resided in the home since January 2011, and that she had lived with her mother during the certification period in question. This testimony was not credible.² Rather, the evidence showed that ██████ lived with ██████ and the children throughout the entire certification period. The Court finds that that ██████ intentionally deceived the Department for the purpose of obtaining food stamps benefits for which he was not eligible, based on the following:

- (1) ██████ remains married to ██████, and they file joint tax returns. (Testimony of ██████.)
- (2) Although ██████ is employed, ██████ has not asked her to pay child support on ██████ behalf. (Testimony of ██████.)
- (3) ██████ has been employed by ██████, since October 2009. Her address of record with her employer is the ██████ address. (Testimony of Ms. Dailey; Exhibit P-7.)
- (4) In March 2013, ██████ and ██████ purchased and registered a vehicle together.³ The vehicle is registered at the ██████ address. (Testimony of Ms. Dailey and ██████; Exhibit P-5.)
- (5) An Accurant advanced person search listed the ██████ address as the most recent physical address for both ██████ and ██████. (Testimony of Ms. Dailey; Exhibit P-4.)
- (6) Both ██████ and ██████ use the same mailing address: P.O. Box 346, Colbert, Georgia 30628. (Testimony of Ms. Dailey and ██████; Exhibits P-4, P-6.)
- (7) On June 6, 2013, ██████ sent a text message to ██████ that stated, in relevant part, "[I]s it ok[ay] if I come over this afternoon and get

² The Court declines to rely on the hearsay statements of ██████ contained in a letter dated August 26, 2013. (Exhibit R-1.)

³ ██████ testified that he purchased the vehicle jointly with ██████ because he wanted to help her build credit. However, his testimony was not credible. (Testimony of ██████.)

the rest of mine and [REDACTED] clothes?" Although this message suggests that the couple was separated in June 2013, it is not evidence that they were separated at any time between January and December 2012. In fact, it suggests a separation of more recent vintage. (Testimony of [REDACTED]; Exhibit R-2.)

5.

If [REDACTED] had been included in [REDACTED] household assistance unit and her income considered as part of the household budget, [REDACTED] would have been ineligible for food stamps. Therefore, the Petitioner seeks to recoup an overpayment of food stamps benefits previously issued to the household. For the certification period that ran from January through December 2012, [REDACTED] received an overpayment of benefits in the amount of \$2,411.00. (Testimony of Ms. Dailey; Exhibits P-3, P-12.)

6.

This is [REDACTED]'s first intentional program violation. (Testimony of Ms. Dailey.)

III. Conclusions of Law

1.

The issues presented for consideration in this hearing are whether the Respondent/Head of Household received an overpayment of food stamps benefits through an intentional violation of program rules, and, if so, the amount of the overpayment. These issues must be resolved in accordance with the Food and Nutrition Act of 2008, 7 U.S.C. § 2011, *et seq.*, as amended; its implementing regulations, 7 C.F.R. §§ 273.1 through 273.18; and the Economic Support Services Manual of the Georgia Department of Human Services at 3420 ("Food Stamps Manual").

2.

An intentional program violation results when a food stamps applicant or recipient has "intentionally . . . made a false or misleading statement, or misrepresented, concealed, or withheld facts." 7 C.F.R. § 273.16(c)(1).

3.

To sustain the allegation that the Respondent/Head of Household has committed an intentional program violation, the evidence must be "clear and convincing," which means that more than a mere preponderance of the evidence is required. The standard has been described by one court as follows:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief

or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Smith v. Department of Health and Rehabilitative Svcs., 522 So. 2d 956, 958 (Fla. App. 1988). However, proof beyond a reasonable doubt, as the State must provide in a criminal case, is not required. See Motes v. Hall County, 251 Ga. 373 (1983); Addington v. Texas, 441 U.S. 418, 424 (1979).

4.

In this case, the Petitioner met its burden and proved, by clear and convincing evidence, that [REDACTED] intentionally violated the rules and regulations of the food stamps program by falsely reporting that [REDACTED] was not a member of his household assistance unit during the time period of January through December 2012. 7 C.F.R. § 273.16(c)(1). Consequently, [REDACTED]'s income was not considered when [REDACTED]'s eligibility was determined. This caused him to receive an overpayment of food stamps benefits in the amount of \$2,411.00.

5.

Each person who was an adult member of the household at the time an overpayment occurred is responsible for making restitution for the overpayment. 7 C.F.R. §§ 273.16(b)(9), 273.18(a)(4)(i); see also O.C.G.A. § 49-4-15(c). In this case, [REDACTED] is required to make restitution for an overpayment of \$2,411.00.

6.

An individual who commits an intentional violation of the rules and regulations governing the Food Stamps Program must be disqualified from program participation. The disqualification period is twelve months for a first violation, twenty-four months for a second violation, or permanently for a third violation. 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(b)(1). Because this is [REDACTED]'s first intentional program violation, he must be disqualified from participation in the Food Stamps Program for a period of twelve months.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that the Respondent/Head of Household is administratively disqualified from Food Stamps Program participation for a period of twelve months. Further, the Petitioner's decision to recoup an overpayment of \$2,411.00 is **AFFIRMED**.

SO ORDERED, this _____ day of November, 2013.

KRISTIN L. MILLER
Administrative Law Judge