

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

GEORGIA DEPARTMENT OF HUMAN SERVICES,	:	
Petitioner,	:	
v.	:	Docket No.:
██████████,	:	OSAH-OIS-FSF-██████████-52-Miller
Head of Household,	:	
and	:	Agency Reference No.: ██████████
██████████,	:	
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 **DENIED**, and its decision to recoup an overpayment is **REVERSED**.

II. Findings of Fact

1.

The Respondent/Head of Household, ██████████, was a recipient of food stamps benefits in Georgia from April 2012 through August 2012, and again from October 2012 through June 2013. During this time period, she resided continuously at ██████████ (Testimony of Sara Dailey and ██████████; Exhibits P-4, P-12, P-10.)

2.

██████████ has two children, ██████████, who reside with her at the ██████████ address. ██████████ is the father of both children. ██████████ residence is owned by her father, ██████████. (Testimony of Ms. Dailey and ██████████.)

¹ The record was held open until October 29, 2013, for the submission of Exhibit R-1.

3.

On food stamps applications submitted in April 2012 and October 2012, ██████ reported that her household consisted of herself and her two children. Therefore, during the time period in question, her food stamps allotment was calculated based on a three-person household. (Testimony of Ms. Dailey and ██████; Exhibits P-12, P-13.)

4.

The Petitioner contends that ██████ resided with ██████ and the children from April 2012 through June 2013, and that ██████ received an overpayment of food stamps benefits due to her failure to report his income. At the hearing, the Petitioner presented the following evidence to support its allegations:

- (1) ██████ has been employed by ██████, since June 11, 2009. ██████ address is his address of record with his employer. (Testimony of Ms. Dailey; Exhibits P-8, P-10.)
- (2) An Accurant advanced person search reported ██████ address as the most recent address for both ██████. (Testimony of Ms. Dailey; Exhibit P-4.)
- (3) ██████ address is listed on ██████ driver's license. However, his license was last renewed in March 2011. (Testimony of Ms. Dailey; Exhibit P-5.)
- (4) ██████ mail is delivered to the ██████ address. (Testimony of Ms. Dailey; Exhibit P-6.)

5.

Notwithstanding the Petitioner's evidence, which was entirely circumstantial, ██████ testified that ██████ had not resided in the home since March 2012.² Her testimony was corroborated by an Order for Child Support that was entered against ██████ on September 24, 2012, in the Superior Court of Elbert County. By the terms of the Order, ██████ was required to pay \$376.00 per month in child support for ██████, beginning on November 1, 2012. ██████ received the first child support payment in December 2012. (Testimony of ██████; Exhibit R-1.)

² According to ██████ resides primarily with his sister in Elberton, Georgia, and may occasionally stay with his mother or father. (Testimony ██████.)

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 failed to prove, 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 her household assistance unit during the time period of April 2012 through June 2013. 7 C.F.R. § 273.16(c)(1). Although the Petitioner presented circumstantial evidence that [REDACTED] resided at the [REDACTED] address during the relevant time frame, this circumstantial evidence was not persuasive in light of [REDACTED] testimony and the Order of Child Support entered against [REDACTED] in September 2012. Consequently, the

Petitioner is not authorized to disqualify [REDACTED] from participation in the Food Stamps Program.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Petitioner's request for administrative disqualification of the Respondent/Head of Household is **DENIED**, and its decision to recoup an alleged overpayment is **REVERSED**.

SO ORDERED, this _____ day of November, 2013.

KRISTIN L. MILLER
Administrative Law Judge