

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

OFFICE OF INSPECTOR GENERAL,	:	
DEPARTMENT OF HUMAN SERVICES,	:	
Petitioner,	:	Docket No.
v.	:	OSAH-OIS-FSF- [REDACTED]
	:	
[REDACTED],	:	Agency Reference No.
Head of Household,	:	
and	:	
	:	
[REDACTED],	:	
Respondent.	:	

**FINAL DECISION**

**I. INTRODUCTION**

Petitioner referred this case to the Office of State Administrative Hearings (“OSAH”) to, first, administratively disqualify Respondent from participation in the Supplemental Nutrition Assistance Program (“SNAP”) for twelve months and, second, to request repayment of an alleged overissuance in SNAP benefits from the Respondent/Head of Household. Respondent and Head of Household, [REDACTED], was sent advance notice of the hearing but did not appear at the time the case was called.<sup>1</sup> Kelly McKibben, a food stamp fraud investigator for the Office of the Inspector General, appeared as the Petitioner’s representative and submitted written direct testimony with attached exhibits.

For the reasons set forth below, Petitioner’s request to administratively disqualify Respondent from SNAP participation is **DENIED**, and Petitioner’s request for repayment of an

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<sup>1</sup> The hearing may go forward without the household member if he or she fails to appear without justification. 7 C.F.R. § 273.16(e)(4). In such a case, the hearing officer makes a determination, using a clear and convincing standard of proof, as to whether the individual committed an intentional program violation on the basis of the evidence submitted by the Department. 7 C.F.R. § 273.16(e)(3)(iii)(E), (e)(4).

overissuance of SNAP benefits in the amount of \$3,110.00 from Respondent/Head of Household is **DENIED**.

## **II. FINDINGS OF FACT**

1.

Respondent receives food stamp benefits through SNAP for herself and her two children. (*Exhibits P-3, P-4, P-6, P-7, P-11.*)

2.

On March 7, 2011, in the Superior Court of Douglas County, Georgia, Respondent entered a negotiated guilty plea to three separate offenses, including one felony count of purchase/possession/control of an illegal substance. (*Exhibits P-10, P-13.*) Respondent was sentenced to five years' probation pursuant to O.C.G.A. § 16-13-2, which authorizes a conditional discharge for first-time drug offenders. (*Exhibit P-10.*) Subsequently, Respondent violated the terms of her probation and was arrested on two occasions, December 21, 2011, and January 11, 2012, for drug-related violations. On each occasion, she waived her right to an Administrative Sanctions Hearing and agreed to enter and complete a residential substance abuse treatment facility program. Her probation was not revoked in either case. (*Exhibit P-13.*) Petitioner submitted no evidence that the court has since entered an adjudication of guilt on the March 7, 2011 charges.

3.

Subsequent to her conditional discharge, Respondent renewed her benefits three times — on October 20, 2011, April 9, 2012, and September 23, 2012 — and also reapplied for benefits on November 18, 2012. Accompanying each application was information on the rights and responsibilities of SNAP applicants and beneficiaries, including the following warning: "If you

[the applicant or recipient] commit and are convicted of a felony related to possession, use or distribution of drugs,” the penalty is a permanent loss of benefits. In addition, the informational documents warn the applicant that “[hiding] information or [failing to] tell the truth” warrants a twelve-month loss of benefits for the first offense, a twenty-four month loss for a second offense, and permanent loss for the third offense. When submitting each application, Respondent indicated that she did not have a drug felony conviction. By electronically signing each application, Respondent averred that her answers were “true and correct to the best of [her] knowledge.” (*Exhibits P-3, P-4, P-5, P-6, P-7.*)

4.

The Department contends that Respondent intentionally violated SNAP rules and regulations by failing to report her March 2011 felony drug charge out of Douglas County.<sup>2</sup> Based on this alleged intentional program violation, the Department seeks to disqualify Respondent from receiving SNAP benefits for a twelve-month period as a result of making a false statement in each of the four aforementioned applications.<sup>3</sup> The Department claims that, because she was disqualified by making false statements to retain eligibility, that the amount in SNAP benefits she received subsequently, specifically between November 2011 and June 2013,<sup>4</sup> for a total of \$3,110.00, must be recouped as an overissuance. (*Exhibits P-11, P-12.*)

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<sup>2</sup> The Department has not asserted that Respondent should be rendered permanently ineligible for food stamp benefits due to a felony drug conviction.

<sup>3</sup> Only one penalty is imposed for “[t]he same act of intentional Program violation repeated over a period of time.” 7 C.F.R. § 273.16(e)(8).

<sup>4</sup> The Department initially sought to recoup \$4069.00 in SNAP benefits issued between April 2011 and May 2013. However, because the Office of Inspector General could not determine that between March and October 2011 Ms. [REDACTED] had signed a statement that she did not have a felony drug conviction, the overpayment amounts were recalculated to begin as of November 2011. (*Exhibit P-11.*)

### III. Conclusions of Law

1.

Petitioner bears the burden of proof in this matter and must show by clear and convincing evidence that Respondent “committed, and intended to commit,” an intentional program violation. 7 C.F.R. § 273.16(e)(6); *Smith v. Department of Health and Rehabilitative Svcs.*, 522 So. 2d 956, 958 (Fla. App. 1988). On the other hand, a claim for the overpayment of benefits can be established by a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4) (The standard of proof is a preponderance of evidence unless otherwise provided by law.)

2.

The issues presented for consideration in this hearing are whether Respondent committed an intentional program violation that would support the imposition of a disqualification period, and whether, and in what amount, her household received an overissuance of SNAP benefits. These issues must be resolved in accordance with SNAP (formerly known as the Food Stamp Program), which is governed by the Food and Nutrition Act of 2008, 7 U.S.C. § 2011-2036a; 7 C.F.R. § 271-285; and the *Economic Support Services Manual, Volume III, of the Georgia Department of Human Services (“Food Stamp Manual”)*. Specifically applicable to intentional program violations are 7 U.S.C. § 2015; 7 C.F.R. §§ 273.11, 273.15, and 273.16; and *Food Stamp Manual* §§ 3310 and 3315.

3.

Federal regulations define an Intentional Program Violation as when a SNAP applicant or participant intentionally makes a false or misleading statement, or misrepresents, conceals, or withholds facts. 7 C.F.R. § 273.16(c)(1). The *Food Stamp Manual* further provides that

misleading the Department in order establish or maintain eligibility constitutes an Intentional Program Violation. *Food Stamp Manual* § 3315.

4.

“An individual *convicted* (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be considered” eligible to receive SNAP benefits. 7 C.F.R. § 273.11(m) (emphasis added). Nevertheless, the disqualified member’s household may still be eligible for benefits and his or her resources will be considered in determining the household’s income eligibility and benefit levels. 7 C.F.R. § 273.11(c)(1), (m). Federal law allows states to exempt these individuals from disqualification or amend the period of ineligibility; however, Georgia has not done so. 7 C.F.R. § 273.11(m); *Food Stamp Manual* § 3310.

5.

Here, Petitioner has not shown that Respondent intentionally withheld facts or made a false or misleading statement. In order to show this, Petitioner must prove that Respondent understood (and was correct in her understanding) that a conditional discharge on a drug felony constitutes a conviction and then intentionally concealed her March 2011 “conviction.” First, a conditional discharge under Code section 16-13-2 is not a conviction. Pursuant to this section, the court is permitted to place the individual on probation “*without entering a judgment of guilt . . . and defer further proceedings.*” O.C.G.A. § 16-13-2(a) (emphasis added). If the individual violates the terms of his or her probation, the court is permitted to “enter an adjudication of guilt and proceed accordingly.” *Id.* However, if the individual completes his or her period of probation, the charges are dismissed and there is no adjudication of guilt or a conviction for the

“purposes of this Code section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.” *Id.* This reasonably includes eligibility for SNAP benefits.

6.

Second, conditional discharge is a type of first offender treatment because it is only available for first-time drug offenders. Treatment under Code section 16-13-2 has thus been referred to as “first offender status.”<sup>5</sup> *Smith v. State*, 322 Ga. App. 549, 550-552 (2013). The *Food Stamp Manual* provides, “[a]n individual who meets the definition of a lawbreaker, but who has been granted first offender status by the court, is not subject to [food stamp] disqualification.” *Food Stamp Manual* § 3310.

7.

In this case, the record reflects that Respondent was granted a conditional discharge for a first-time drug offense under O.C.G.A. § 16-13-2(a). Since her guilt has not been adjudicated, the Court concludes that she has not been convicted of a drug-related felony that would subject her to disqualification under the federal rules. 7 C.F.R. § 273.11(m). Under these circumstances, she is also a “first offender” within the meaning of the Department’s policy manual. *See Smith*, 322 Ga. App. at 550-552; *Food Stamp Manual* § 3310. Accordingly, Respondent may not be disqualified from SNAP participation on the basis of her criminal

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<sup>5</sup> In addition to first offender treatment under Code section 16-13-2, first offender treatment may be obtained under Code section 42-8-60. The former provision is specific to persons who have never been convicted of a drug-related offense, while the latter generally pertains to anyone who has not previously been convicted of any type of felony. O.C.G.A. § 42-8-60(a). The statutory provisions use parallel language (i.e., refrain from “entering a judgment of guilt,” “defer further proceedings,” place on “probation,” discharge “without adjudication of guilt,” and a successful discharge from each does not constitute a criminal conviction.), and courts have found the provisions to be “analogous.” O.C.G.A. §§ 42-8-60(a), -62(a); *Wilkinson v. State*, 283 Ga. App. 213, 213 (2006); *State v. Stinson*, 278 Ga. 377, 380 (2004).

history, nor can it be said that she intentionally provided a false statement to the Department regarding her qualifications for food stamps.

8.

Based on the above findings of facts, the Court concludes that Petitioner failed to establish by clear and convincing evidence that Respondent intentionally committed a SNAP violation and is, therefore, subject to disqualification. The Court further concludes that Petitioner failed to show by a preponderance of the evidence that Respondent/Head of Household received an overissuance of food stamp benefits.

**IV. DECISION**

**IT IS HEREBY ORDERED THAT** Petitioner's request to administratively disqualify Respondent from SNAP participation is **DENIED** and Petitioner's request for a repayment of an overissuance of SNAP benefits is also **DENIED**.

**This 10<sup>th</sup> day of January, 2014.**

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**KIMBERLY W. SCHROER**  
**Administrative Law Judge**