

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

GEORGIA DEPARTMENT OF HUMAN SERVICES, OFFICE OF THE INSPECTOR GENERAL  
Petitioner,



Docket No.:

Walker-

Russell

MAR 25 2014

v.

Agency Reference No.:

and

Head of Household,

*Jenna Judy*  
Jenna Judy, Legal Assistant

Respondent

INITIAL DECISION

Appearances: For Petitioner: Marie Watson, Special Assistant Attorney General  
For Respondent: Lindsey M, Siegel, Atlanta Legal Aid Society, Inc,

I. INTRODUCTION

This case was referred to the Office of State Administrative Hearings by the Office of the Inspector General (Petitioner) to administratively disqualify (Respondent/Head of Household) from Food Stamp Program participation and requests repayment from the Head of Household of an alleged Food Stamp over issuance of \$13,077. An administrative hearing was held on . The Petitioner and Respondent were present and provided evidence for the hearing. Upon reviewing the entire documentary evidence received, and for the reasons stated herein, Petitioner's determination that Respondent has committed an Intentional Program Violation resulting in an over issuance of food stamps is **REVERSED**.

II. FINDINGS OF FACT

The Administrative Law Judge has considered the entire evidence in this case and, based upon a preponderance of the credible evidence, makes the following specific findings of fact:

1.

Respondent and her children receive Food Stamp benefits under the SNAP Program. Respondent lives at her grandmother's house located at and pays her grandmother \$525 per month in rent. Respondent presented pictures of the bedrooms

she and her children occupy at her grandmother's house. (*Testimony of Respondent's Exhibit 5*).

2.

On October 4, 2013, Petitioner mailed a letter to Respondent stating that she had an overpayment of \$13,077.00 in SNAP benefits resulting from an Intentional Program Violation from December 11, 2011 to September 1, 2013. (*Testimony of OSAH FORM 1*). Specifically, Petitioner alleges that Respondent lived with the father of one of her children, during the alleged overpayment period and failed to report Mr. \_\_\_\_\_ wages as part of her household income on her annual recertification. If Mr. \_\_\_\_\_ earnings had been included as part of the Respondent's total household's income, the household would not have been eligible for the Food Stamp benefits that they received. Petitioner seeks recoupment of the alleged \$13,077.00 overpayment. (*Testimony of Rodney Philmore*).

3.

Petitioner tendered evidence that Ms. \_\_\_\_\_ used the \_\_\_\_\_ address on several documents, including a Rent-A-Center application, a car registration, and employment records. In addition, Petitioner tendered evidence that Respondent's name is on the water bill at \_\_\_\_\_ and Respondent receives mail there as well. (*Testimony of Rodney Philmore; Petitioner's Exhibit 1*).

4.

Respondent reported her home address as \_\_\_\_\_ on each recertification during the alleged overpayment period. In her 2013 recertification, Respondent listed \_\_\_\_\_ as her mailing address, but listed \_\_\_\_\_ as her home address. (*Testimony of \_\_\_\_\_*).

5.

Respondent used the \_\_\_\_\_ address on many documents, including her Georgia Driver's License, her children's daycare application, her children's Peach State Health Plan records, and her temporary car tag. (*Testimony of \_\_\_\_\_ Respondent's Exhibits 3, 4, 6, 7*).

6.

Petitioner's file contains a recent Lexis people search showing Respondent's current address as \_\_\_\_\_ (*Respondent's Exhibit 1*). The file also contained a Lexis people search for Mr. \_\_\_\_\_, showing his current address as \_\_\_\_\_ (*Testimony of Rodney Philmore; Respondent's Exhibit 2*).

7.

Respondent gave credible and undisputed testimony that she used \_\_\_\_\_ as her mailing address because her Food Stamp EBT card was stolen from her \_\_\_\_\_ mailbox in October 2012. Respondent reported the card as stolen to the Food Stamp office and filed a police report. Respondent lost a month of Food Stamp benefits because of the incident. Because of the theft, Respondent switched her mail to Mr. \_\_\_\_\_ address at the time: \_\_\_\_\_ When Mr. \_\_\_\_\_ moved in February 2013, Respondent switched her mail again to his new address: \_\_\_\_\_ (*Testimony of \_\_\_\_\_*).

8.

Respondent gave credible and undisputed testimony that she did not live with Mr. [redacted] during the alleged overpayment period. Respondent uses his address for her mail because of the mail theft incident at her grandmother's house. In addition, Respondent cosigned some documents with Mr. [redacted], such as his lease and her car registration, because neither Respondent nor Mr. [redacted] had sufficient credit to get these items on their own. (*Testimony of [redacted]*).

9.

Respondent and Mr. [redacted] do not share a bank account, food, or any household expenses. Respondent buys food and prepares it at her grandmother's house for herself and her three children only. (*Testimony of [redacted]*).

### III. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the undersigned makes the following conclusions of law:

1.

Petitioner bears the burden of proof in this matter. OSAH Rule 616-1-2-.07(1)(d). The evidentiary standard to prove that an Intentional Program Violation occurred is by clear and convincing evidence. OSAH Rule 616-1-1-.21(4); 7 C.F.R. § 273.16(e)(6).

2.

An Intentional Program Violation occurs when a party, "intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts..." 7 C.F.R. § 273.16(c)(2). "An IPV is an intentional action by an individual to establish or maintain an AU's eligibility or to increase or prevent a decrease in the AU's benefits, by providing false or misleading information or by withholding information." ODIS Eligibility Manual, Page 3315-1 (FS MT-36 – 11/13).

3.

The clear and convincing evidence standard requires Petitioner to prove that Respondent lived with Mr. [redacted] during the alleged overpayment period of December 11, 2011 until September 1, 2013. Petitioner must also prove that Respondent's statements concerning her residence were false or misleading, and that the existence of both of these elements is "highly probable," not merely more likely than not. *U.S. v. Owens*, 854 F.2d 432, 436 n.8 (11th Cir. 1988). "Clear and convincing" is a more stringent standard than 'preponderating' and requires a greater quantum and a high quality of proof in Plaintiff's favor." *In re Estate of Burton*, 265 Ga. 122, 123 (1995).

4.

Federal regulations define who is in a household, the unit that receives Food Stamps benefits, as "[a] group of individuals who live together and customarily purchase and prepare meals together for home consumption." 7 C.F.R. § 273.1(a).

5.

Georgia's ODIS manual provides that the applicant's statement will be accepted to determine household composition unless there is information that conflicts with other information available to the agency. ODIS Manual, at Page 3205-3.

6.

If verification of household composition is required, ODIS provides that the following sources are to be used: "a statement from a landlord; a statement from a person outside the [household] who has knowledge of the [household's] situation; any other source which verifies the applicant's statement." ODIS Manual, at Page 3205-3.

In this matter, Petitioner did not present any evidence that it requested verification of Respondent's residence or that it considered "the circumstances of Respondent's particular living arrangement" before its determination that Respondent committed an Intentional Program Violation. In addition, Respondent gave credible and undisputed evidence showing that Respondent used the \_\_\_\_\_ address for her mail and business transactions only. Petitioner presented no evidence that disproves Respondent's evidence that she has never physically resided with Mr. \_\_\_\_\_

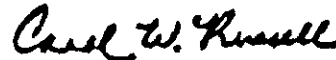
7.

The evidence does not clearly and convincingly demonstrate that Respondent lived at \_\_\_\_\_ during the relevant time period. Although Respondent used the location as her mailing address. Respondent gave credible and undisputed evidence that she did not live with Mr. \_\_\_\_\_ during the alleged overpayment period. In addition, there was no evidence that Respondent and Mr. \_\_\_\_\_ customarily purchase and prepare meals together for home consumption. Accordingly, the evidence does not clearly and convincingly support the allegation that Respondent failed to include Mr. \_\_\_\_\_ in the household composition during the relevant period of December 11, 2011 to September 1, 2013.

#### IV. DECISION

Based upon the foregoing Findings of Facts and Conclusions of Law, Petitioner's determination that Respondent committed an Intentional Program Violation resulting in an overpayment of \$13,077, its proposed action to recoup these benefits from Respondent, and its decision to administratively disqualify Respondent from the Food Stamp Program is **HEREBY REVERSED.**

SO ORDERED this 25th day of March, 2014.



**CAROL WALKER-RUSSELL**  
Administrative Law Judge