

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

DHS, OFFICE OF THE INSPECTOR  
GENERAL,

Petitioner,

v.

██████████

Head of Household,

and

██████████

Respondent.

:  
: Docket No.: OSAH-OIS-FSF-██████████-Baxter

:  
: Agency Reference No.: ██████████

FILED  
OSAH

APR 18 2014

*Valerie Ruff*

Valerie Ruff, Legal Assistant

**FINAL DECISION**

The above-styled action was brought by the Department of Human Services, Office of Inspector General (“DHS”) seeking to administratively disqualify Respondent from Food Stamp Program participation for an alleged intentional violation of the Food Stamp Program, which was consolidated with a separate action seeking to affirm its decision to collect an over-issuance of food stamp benefits, if any, resulting from that alleged intentional program violation. For the reasons stated herein, the DHS’s request to administratively disqualify Respondent from Food Stamp Program participation is **GRANTED** and its decision to recoup the over payment is **AFFIRMED in part**.

**I. Findings of Fact**

1. DHS alleges that Respondent under-reported her income from January 2009 through December 2012, receiving an overissuance of food stamp benefits in the amount of \$33,693.00. The following chart sets forth the income Respondent reported to DFCS over the four year period as well as her reported income on her federal tax returns.

Date	Action	Reported Monthly Income to DFCS
January 2009	Applied for benefits and denied	\$3,300.00
March 2009	Applied for benefits and approved	\$0.00
August 2009	Recertified	\$1,538.31 (unemployment)
<b>2009 Tax Return</b>	<b>\$23,336.00 income</b>	
February 2010	Declined to re-certify; case closed	
July 2010	Applied for benefits and approved	\$0.00
<b>2010 Tax Return</b>	<b>\$23,939.00 income</b>	
January 2011	Recertified	\$2,000.00
July 2011	Recertified	\$0.00
December 2011	Recertified	\$2,000.00
<b>2011 Tax Return</b>	<b>\$25,792.00 income</b>	
May 2012	Recertified	\$2,000.00
<b>2012 Tax Return</b>	<b>\$16,092.00 income</b>	

2. DHS required Respondent to report a change in her income when it went above approximately \$3,000.00 a month.

3. Further, DHS's Manual Section 3425 provides that if Respondent "owns a business that is not incorporated and the [Respondent] is the sole proprietor, any income the business earns is counted as countable gross income." DHS Manual also provides that if Respondent "owns a business that is incorporated the gross countable income is the amount that corporation pays to the [Respondent]."

4. Respondent owns a Limited Liability Company, [REDACTED] ("LLC"), for political consulting work. She has no employees and the work is sporadic. Respondent will enter into one or two large contracts during campaign cycles, but otherwise earns very little on a month-to-month basis. The LLC's gross income for 2009 through 2012 ranged from \$71,000.00 to \$117,000.00. The LLC incurs significant expenses, leaving little money left over for Respondent. On her federal taxes, Respondent filed as a sole proprietor, which as a member of the LLC, she may elect to do for income tax purposes.

5. Respondent testified that she earned the majority of her 2010 income (\$23,000.00) in October, November, and December (averaging \$7,666.66 a month), yet she continued to receive benefits (\$952) and did not notify DHS of the increase in income for those three months.

## II. Conclusions of Law

1. The Respondent/Head of Household received an overissuance of Food Stamp Benefits for intentionally violating the Food Stamp Program Regulations. 7 C.F.R. § 273.16(c). Each person who was an adult member of the household when the overpayment occurred is responsible for making restitution for the overpayment. *See* 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.18(a)(4)(i); *see also* O.C.G.A. § 49-4-15(c).

2. DHS alleges two separate violations regarding Respondent's benefits. First, DHS alleges that Respondent failed to include her LLC's countable gross income as her income when applying or recertifying for benefits. The Manual provides that if a business is not incorporated and the member is a sole proprietor, all income is counted. If the business is incorporated, the Manual requires that DHS only look to the money paid to the member. Here, Respondent's business is a Limited Liability Company which is not incorporated, but is also not a sole proprietorship. 26 C.F.R. 301.7701-2; O.C.G.A. 14-11-101(5) (providing definition of corporations which excludes LLCs). Given the nature of a LLC and the imprecise language of the Manual, DHS has failed to prove by clear and convincing evidence that Respondent violated the Food Stamp Program Regulations by failing to include the LLC's gross income as her personal income. In fact, DHS has failed to prove that Respondent's gross income is the appropriate income to consider for determining benefits in this case.

3. Second, DHS alleges Respondent failed to notify it when her monthly income exceeded \$3,000.00. Respondent admitted as such for the months of October, November, and December 2010 when she testified that she received her entire year's income (\$23,000.00) during those months. As such, DHS has met its burden in demonstrating that Respondent committed an intentional program violation in October, November, and December 2010, and received an overissuance of benefits for those three months.

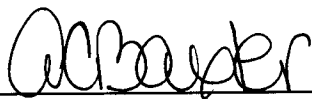
2. Individuals found to have committed an intentional program violation shall be ineligible to participate in the program for a period of twelve months for the first occasion, a period of twenty-four months upon the second occasion, and permanently for the third occasion. 7 U.S.C. § 2015(b)(1). Accordingly,

## III. Decision

**IT IS HEREBY ORDERED THAT** the Respondent is administratively disqualified from Food Stamp Program participation for a period of twelve months.

**IT IS FURTHER ORDERED THAT** DHS's decision to recoup an over-issuance solely in the amount of \$2,856.00 (benefits for October, November, and December 2010) is **AFFIRMED**.

**SO ORDERED** this 16th day of April, 2014.

  
AMANDA C. BAXTER, Judge

