

STATE OF RHODE ISLAND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES APPEALS OFFICE

RI DEPARTMENT OF HUMAN SERVICES

v.

DOCKET No.21 -1379

[REDACTED]

DECISION

I. INTRODUCTION

A telephonic hearing on the above-entitled matter was conducted by an Administrative Disqualification Hearing Officer on August 25, 2021. The Department of Administration, Office of Internal Audit, Fraud Unit (hereinafter, the "Agency"), on behalf of RI Department of Human Services (hereinafter "DHS") initiated this matter to an Administrative Disqualification Hearing and held to examine the charge that the Respondent had committed an Intentional Program Violation (hereinafter "IPV") of the Supplemental Nutrition Assistance Program (hereinafter "SNAP") regulations. The Agency argues that the Respondent provided false information, specifically false rent amount. The Agency is seeking that the Respondent be charged with an IPV, be disqualified from SNAP for a period of one (1) year and be required to repay the over issuance of SNAP benefits totaling \$1808.00 she received but was not entitled to. For the reasons discussed in more detail below, the Administrative Disqualification Hearing has been decided against the Respondent.

II. JURISDICTION

The Executive Office of Health and Human Services (“EOHHS”) is authorized and designated by R.I.G.L. §42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2 to be the entity responsible for appeals and hearings related to Human Services (“DHS”). The Administrative Hearing was held in accordance with the Administrative Procedures Act, R.I.G.L. §42-35-1 ET. Seq. and EOHHS regulation 210-RICR-10-05-2.

III. ISSUE

The issue before this Administrative Disqualification Hearing Officer is whether the Respondent committed a SNAP IPV by intentionally making a false statement, or by misrepresenting, concealing or withholding facts to receive SNAP benefits in accordance with Federal and Departmental Policy as set forth below.

IV. STANDARD OF PROOF

The Administrative Disqualification Hearing Officer is required to carefully consider the evidence and determine by clear and convincing evidence if an IPV occurred. The Agency’s burden to support claims with clear and convincing evidence requires that they present clear, direct, and convincing facts that the Hearing Officer can accept as highly probable.

V. PARTIES AND EXHIBITS

The Agency’s Internal Auditor, Nicholas Fanuele, investigated the Respondent’s case and attended the telephonic hearing. Internal Auditor, Fanuele provided testimony based on the facts established in determining an IPV of the SNAP regulations. The Agency offered the following evidence at hearing:

1. A copy of a SNAP Renewal Form, dated November 1, 2018, marked as Agency's Exhibit 1.
2. A copy of lease agreement dated April 24, 2019, marked as Agency's Exhibit 2.
3. A copy of the lease agreement dated January 1, 2019, submitted by [REDACTED], marked as Agency's Exhibit 3.
4. A copy of monthly lease agreement dated April 29, 2019, submitted by [REDACTED], marked as Agency's Exhibit 4.
5. Copies of rent checks for \$925.00 from the Respondent to her landlord, dating from June 2019 through November 2019, marked as Agency's Exhibit 5.
6. A copy of EDRS search results marked as Agency's Exhibit 6.
7. A copy of over payment calculation marked as Agency's Exhibit 7.
8. Copies of SNAP Packets marked as Agency's Exhibit 8.

The Respondent, [REDACTED], attended the hearing and testified on her own behalf. The Respondent offered the following evidence at hearing:

1. Copies of court documents marked as Respondent's Exhibit 1.

VI. RELEVANT LAW

7 CFR 273.16, entitled "Disqualification for Intentional Program Violation (IPV)" (c), defines an IPV as intentionally making false or misleading statement, or misrepresenting, concealing or withholding facts; or committing any act that constitutes a violation of SNAP, SNAP regulations, or any State statute "for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards." A copy of 7 CFR 273.16, in pertinent part is attached. To determine whether an intentional program violation has occurred, 7 CFR 273.16 (e)(6), requires the State Agency to conduct an

administrative disqualification hearing and to determine whether there is clear and convincing evidence that an IPV occurred.

Similarly, Rhode Island state counterpart, 218-RICR-20-00-1, Section 1.9, entitled “Intentional Program Violations” provides that “Fraud Unit is responsible for investigating any cases of alleged intentional program violation and ensuring the appropriate cases are acted upon, either through administrative disqualification hearings or referral to a court of appropriate jurisdiction.” A copy of 218-RICR-20-00-1, Section 1.9, in pertinent part is attached. It further provides that “Administrative disqualification procedures or referral for prosecution action must be initiated whenever there is sufficient documentary evidence to substantiate” an IPV occurred.

If there is a finding that there was an IPV, the disqualification penalty for the first violation is one (1) year. Like it’s federal counterpart, the RI regulations require “clear and convincing evidence” that the household member(s) committed or intended to commit, an IPV.

VII. FINDINGS OF FACT

1. On January 22, 2020, the fraud unit received a fraud referral regarding the Respondent, stating that she submitted a falsified lease agreement.

2. On or about November 7, 2018, DHS received the Respondent’s SNAP Renewal Notice. On this Renewal Notice, page 8, it states “*below is the information we have about expenses that you are responsible to pay, is the information below correct?*” The Respondent does not indicate if the information is correct or not. On the next page the client is allowed to list their expenses. On the first line the Respondent wrote a monthly electric expense of \$ 100.00 per month. On the next line the Respondent listed a monthly rent expense of \$ 1300.00 per month, of which she is responsible to pay the full amount. On page 10 of the SNAP Renewal, it states, “*My signature below indicates that I have read or have had read to me the Rights and*

Responsibilities attached to this form. Under penalty of perjury, I attest that all of my answers on the renewal form are correct and complete to the best of my knowledge, including information about citizenship and immigration status and the identity of the minor children named in this form. I understand that I am breaking the law if I purposely give wrong information and can be punished under federal law, state law or both.” The Respondent’s signature is on the signature line and the form is dated November 1, 2018.

3. On or about May 21, 2019, the Respondent submitted a monthly lease agreement to DHS, as proof of her of her rent expense. The lease agreement is dated April 24, 2019. The agreement is between tenants [REDACTED], [REDACTED] and landlord [REDACTED]. Under section 3, the rent amount is listed as \$1300.00 per month. The landlord and the Respondent’s signatures are on the last page.

4. On February 2, 2020, Internal Auditor, Nicholas Fanuele, e-mailed the Respondent’s landlord [REDACTED], to request rent expense information. On March 9, 2020, [REDACTED] provided Internal Auditor, Nicholas Fanuele with a lease agreement signed and dated January 1, 2018, between [REDACTED], [REDACTED] and landlord [REDACTED]. Under section 3, it states, the tenant agrees to pay \$925.00 per month, due on the first day of each month to [REDACTED]. The landlord and the Respondent’s signatures are signed on the last page.

5. On March 2, 2020, [REDACTED] provided Internal Auditor Nicholas Fanuele, with a lease agreement, signed and dated April 29, 2019, between tenants [REDACTED], [REDACTED] and landlord [REDACTED]. Under section 3, it states, the tenant agrees to pay \$925.00 per month, due on the first day of each month to [REDACTED]. The landlord and

the Respondent's signatures are signed on the last page. This monthly rent agreement appears to be a modified version of Exhibit # 2, the lease agreement submitted to DHS by the Respondent.

6. On March 2, 2020, [REDACTED] provided Nicholas Fanuele, with monthly rent checks the client sent to him, dating from June 2019 through November 2019. Each check is for \$925.00.

7. On March 9, 2020, Internal Auditor Jorel Johnson, logged on to the Electronic Disqualified Recipient System (EDRS), to verify whether this would be the Respondent's first violation to determine the disqualification period. This is the Respondent's first offense, so the State is pursuing a one-year disqualification.

8. The actual rent that [REDACTED] submitted, was used to calculate the household overpayment. The Respondent collected SNAP benefits to which she was not eligible in the amount of \$1808.00 from December 1, 2018 through April 30, 2020.

9. On March 16, 2020, Internal Auditor Nicholas Fanuele sent a SNAP Packet to the Respondent, to an address listed on her SNAP case, [REDACTED]. The SNAP packet included the Notice of Over Issuance, Waiver Agreement, and Waiver of Right to a Fair Hearing. The packet notified the Respondent that she had ten days to respond. The Respondent responded and stated she would submit evidence. The Respondent did not submit evidence to Internal Auditor Nicholas Fanuele.

10. On February 5, 2021, Internal Auditor Nicholas Fanuele, sent a SNAP Packet to the same address. The SNAP Packet included the Notice of Over Issuance, Waiver Agreement, and Waiver of Right to a Fair Hearing. The packet notified the Respondent that she had ten days to respond. This SNAP Packet was not delivered to intended address and returned to sender.

11. On February 19, 2021, sent a SNAP Packet to an address listed in CLEAR, a shared database resource, [REDACTED]. The SNAP Packet included the Notice of Over Issuance, Waiver Agreement, and Waiver of Right to a Fair Hearing. The packet notified the Respondent that she had ten days to respond. The Respondent indicated that she wanted an Administrative Disqualification Hearing.

12. The Respondent admitted that she falsified the lease because she said the landlord was really charging her \$1300.00 per month. She stated she was writing a check for \$925.00 and then paying the rest in cash whenever she saw the landlord. She stated she is suing the landlord, and this is why he is saying she only paid \$925.00 per month.

VIII. DISCUSSION

The issue to be decided is whether the Respondent intentionally made a false statement, or misrepresented, concealed or withheld facts when she falsified her rental agreement. The record consists of the evidence and testimony from the Agency, as well as the evidence and/or testimony of the Respondent.

The evidence establishes that although the Respondent felt she had a good reason, she did make false statements and send false documentation to DHS regarding her rent. This did cause an overpayment of SNAP benefits. The Respondent admitted to sending in a falsified lease agreement.

Based on the above, it is clear the Respondent intentionally provided false information, concealed information, and otherwise intentionally failed to report correct information.

Accordingly, there is clear and convincing evidence that the Respondent violated the SNAP regulations and committed an IPV.

IX. CONCLUSIONS OF LAW

After careful review of the testimony and evidence presented at the Administrative Disqualification Hearing, this Administrative Disqualification Hearing Officer concludes:

1. The Respondent did falsify her lease.
2. The Respondent did sign under penalty of perjury warnings.
3. The Agency did send a fraud referral.
4. The Agency did overpay SNAP benefits based on false information.
5. Consequently, the Respondent, as head of household, will not be able to

participate in SNAP for twelve (12) months per Title 7-CFR-273.16 (b)(1)(i); SNAP Regulations 218-RICR-20-00-1, Section 1.9 (A)(3)(c) (1,2,3), which states in pertinent part: Individuals found to have committed an IPV through an administrative disqualification hearing shall be ineligible to participate in the program for a period of one (1, or 2) year as this is the first (1st), second (2nd), or permanently for third (3rd) IPV.

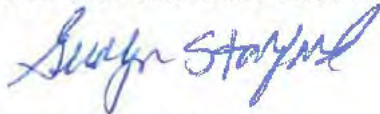
6. SNAP Regulation 218-RICR-20-00-1, Section 1.17; Benefit Over Issuances and Claims, (F) IPV Claims (1) provides in part that if a household member is found to have committed an IPV by an administrative disqualification hearing official, the agency must initiate collection action against the individual's household. Therefore, the Respondent is required to repay the over issuance totaling \$1808. 00 that she received but was not entitled to.

7. This is the Respondent's first (1st) IPV; therefore, sbe as head of household will be ineligible to participate in SNAP for 1 year.

X. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is found that a final order be entered that the Agency's request for an IPV against the Respondent for one (1) year and repayment of \$1808.00 is granted.

AGENCY'S INTENTIONAL PROGRAM VIOLATION CHARGE IS GRANTED



Gerilyn B. Stanford
Administrative Disqualification Hearing Officer

CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to [REDACTED] copies were sent via email to DOA representatives Nicholas Fanuele and Kimberly Seebeck, DHS representatives Denise Tatro and DOR representatives Karen Vincent and Edmund Murray, on this 1st day of September, 2021.

Samara Mitchell

APPENDIX

Code of Federal Regulation: Food and Nutrition Service

7 CFR 273.16 Disqualification for intentional Program violation.

(a) *Administrative responsibility.* (1) The State agency shall be responsible for investigating any case of alleged intentional Program violation and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction in accordance with the procedures outlined in this section. Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation as defined in paragraph (c) of this section. If the State agency does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional Program violation, the State agency shall take action to collect the overissuance by establishing an inadvertent household error claim against the household in accordance with the procedures in §273.18. The State agency should conduct administrative disqualification hearings in cases in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system, in cases previously referred for prosecution that were declined by the appropriate legal authority, and in previously referred cases where no action was taken within a reasonable period of time and the referral was formally withdrawn by the State agency. The State agency shall not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related, circumstances. The State agency may initiate administrative disqualification procedures or refer a case for prosecution regardless of the current eligibility of the individual.

(2) Each State agency shall establish a system for conducting administrative disqualifications for intentional Program violation which conforms with the procedures outlined in paragraph (e) of this section. FNS shall exempt any State agency from the requirement to establish an administrative disqualification system if the State agency has already entered into an agreement, pursuant to paragraph (g)(1) of this section, with the State's Attorney General's Office or, where necessary, with county prosecutors. FNS shall also exempt any State agency from the requirement to establish an administrative disqualification system if there is a State law that requires the referral of such cases for prosecution and if the State agency demonstrates to FNS that it is actually referring cases for prosecution and that prosecutors are following up on the State agency's referrals. FNS may require a State agency to establish an administrative disqualification system if it determines that the State agency is not promptly or actively pursuing suspected intentional Program violation claims through the courts.

(3) The State agency shall base administrative disqualifications for intentional Program violations on the determinations of hearing authorities arrived at through administrative disqualification hearings in accordance with paragraph (e) of this section or on determinations reached by courts of appropriate jurisdiction in accordance with paragraph (g) of this section. However, any State agency has the option of allowing accused individuals either to waive their rights to administrative disqualification hearings in accordance with paragraph (f) of this section or to sign disqualification consent agreements for cases of deferred adjudication in accordance with paragraph (h) of this section. Any State agency which chooses either of these options may base administrative disqualifications for intentional Program violation on the waived right to an administrative disqualification hearing or on the signed disqualification consent agreement in cases of deferred adjudication.

(b) *Disqualification penalties.* (1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first intentional Program violation, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section;

(ii) For a period of twenty-four months upon the second occasion of any intentional Program violation, except as provided in paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section; and

(iii) Permanently for the third occasion of any intentional Program violation.

(2) Individuals found by a Federal, State or local court to have used or received benefits in a transaction involving the sale of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the Program:

(i) For a period of twenty-four months upon the first occasion of such violation; and

(ii) Permanently upon the second occasion of such violation.

(3) Individuals found by a Federal, State or local court to have used or received benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(4) An individual convicted by a Federal, State or local court of having trafficked benefits for an aggregate amount of \$500 or more shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(5) Except as provided under paragraph (b)(1)(iii) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.

(6) The penalties in paragraphs (b)(2) and (b)(3) of this section shall also apply in cases of deferred adjudication as described in paragraph (h) of this section, where the court makes a finding that the individual engaged in the conduct described in paragraph (b)(2) and (b)(3) of this section.

(7) If a court fails to impose a disqualification or a disqualification period for any intentional Program violation, the State agency shall impose the appropriate disqualification penalty specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section unless it is contrary to the court order.

(8) One or more intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

(9) Regardless of when an action taken by an individual which caused an intentional Program violation occurred, the disqualification periods specified in paragraphs (b)(2) and (b)(3) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(10) For the disqualification periods in paragraphs (b)(1), (b)(5) or (b)(6) of this section, if the offense occurred prior to the implementation of these penalties, the State agency may establish a policy of disqualifying these individuals in accordance with the disqualification periods in effect at the time of the offense. This policy must be consistently applied for all affected individuals.

(11) State agencies shall disqualify only the individual found to have committed the intentional Program violation, or who signed the waiver of the right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household.

(12) Even though only the individual is disqualified, the household, as defined in §273.1, is responsible for making restitution for the amount of any overpayment. All intentional Program violation claims must be established and collected in accordance with the procedures set forth in §273.18.

(13) The individual must be notified in writing once it is determined that he/she is to be disqualified. The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification. The disqualification period must continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household.

(c) *Definition of intentional Program violation.* Intentional Program violations shall consist of having intentionally:

(1) Made a false or misleading statement, or misrepresented, concealed or withheld facts;
or

(2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.

(d) *Notification to applicant households.* The State agency shall inform the household in writing of the disqualification penalties for intentional Program violation each time it applies for Program benefits. The penalties shall be in clear, prominent, and boldface lettering on the application form.

(e) *Disqualification hearings.* The State agency shall conduct administrative disqualification hearings for individuals accused of intentional Program violation in accordance with the requirements outlined in this section.

(1) *Consolidation of administrative disqualification hearing with fair hearing.* The State agency may combine a fair hearing and an administrative disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that hearings will be combined. If the disqualification hearing and fair hearing are combined, the State agency shall follow the timeframes for conducting disqualification hearings. If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional Program violation has occurred, the household shall lose its right to a subsequent fair hearing on the amount of the claim. However, the State agency shall, upon household request, allow the household to waive the 30-day advance notice period required by paragraph (e)(3)(i) of this section when the disqualification hearing and fair hearing are combined.

(2) *Disqualification hearing procedures.* (i) State agencies have the option of using the same hearing officials for disqualification hearings and fair hearings or designating hearing officials to conduct only disqualification hearings.

(ii) The provisions of §273.15 (m), (n), (o), (p), and (q)(1) are also applicable for disqualification hearings.

(iii) At the disqualification hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(iv) Within 90 days of the date the household member is notified in writing that a State or local hearing initiated by the State agency has been scheduled, the State agency shall conduct the hearing, arrive at a decision and notify the household member and local agency of the decision. The household member or representative is entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of 30 days and the State agency may limit the number of postponements to one. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

(v) The State agency shall publish clearly written rules of procedure for disqualification hearings and shall make these procedures available to any interested party.

(3) *Advance notice of hearing.* (i) The State agency shall provide written notice to the individual suspected of committing an intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. If mailed, the notice shall be sent either first class mail or certified mail-return receipt requested. The notice may also be provided by any other reliable method. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held.

(ii) If no proof of receipt is obtained, a timely (as defined in paragraph (e)(4) of this section) showing of nonreceipt by the individual due to circumstances specified by the State agency shall be considered good cause for not appearing at the hearing. Each State agency shall establish the circumstances in which non-receipt constitutes good cause for failure to appear. Such circumstances shall be consistent throughout the State agency.

(iii) The notice shall contain at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the individual;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the State agency if the individual fails to appear at the hearing;

(E) A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(F) A warning that a determination of intentional Program violation will result in disqualification periods as determined by paragraph (b) of this section, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

(G) A listing of the individual's rights as contained in §273.15(p);

(H) A statement that the hearing does not preclude the State or Federal Government from prosecuting the individual for the intentional Program violation in a civil or criminal court action, or from collecting any overissuance(s); and

(I) If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

(iv) A copy of the State agency's published hearing procedures shall be attached to the 30-day advance notice or the advance notice shall inform the individual of his/her right to obtain a copy of the State agency's published hearing procedures upon request.

(v) Each State agency shall develop an advance notice form which contains the information required by this section.

(4) *Scheduling of hearing.* The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional Program violation. If the

household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional Program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. In instances where good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice as specified in paragraph (e)(3)(ii) of this section, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

(5) *Participation while awaiting a hearing.* A pending disqualification hearing shall not affect the individual's or the household's right to be certified and participate in the Program. Since the State agency cannot disqualify a household member for intentional Program violation until the hearing official finds that the individual has committed intentional Program violation, the State agency shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, if the misstatement or action for which the household member is suspected of intentional Program violation does not affect the household's current circumstances, the household would continue to receive its allotment based on the latest certification action or be recertified based on a new application and its current circumstances. However, the household's benefits shall be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The State agency shall also reduce or terminate the household's benefits if the State agency has documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of intentional Program violation and the resulting disqualification hearing) and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the State agency may have facts which substantiate that a household failed to report a change in its circumstances even though the State agency has not yet demonstrated that the failure to report involved an intentional act of Program violation.

(6) *Criteria for determining intentional Program violation.* The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section.

(7) *Decision format.* The hearing authority's decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent FNS regulation, and respond to reasoned arguments made by the household member or representative.

(8) *Imposition of disqualification penalties.* (i) If the hearing authority rules that the individual has committed an intentional Program violation, the household member must be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section. The same act of intentional Program violation repeated over a period of time must not be separated so that separate penalties can be imposed.

(ii) No further administrative appeal procedure exists after an adverse State level hearing. The determination of intentional Program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(9) *Notification of hearing decision.* (i) If the hearing official finds that the household member did not commit intentional Program violation, the State agency shall provide a written notice which informs the household member of the decision.

(ii) If the hearing official finds that the household member committed intentional Program violation, the State agency shall provide written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. In addition, the notice shall inform the household member of the date the disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for Program benefits. The State agency shall also provide written notice to the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in §273.11(c). A written demand letter for restitution, as described in §273.18(d)(3), shall also be provided. ...

218-RICR-20-00-1

TITLE 218 – DEPARTMENT OF HUMAN SERVICES

CHAPTER 20 – INDIVIDUAL AND FAMILY SUPPORT PROGRAMS

SUBCHAPTER 00 - N/A

PART 1 – Supplemental Nutrition Assistance Program

1.9 Intentional Program Violations

- A. The Fraud Unit is responsible for investigating any case of alleged intentional program violation and ensuring that appropriate cases are acted upon, either through administrative disqualification hearings or referral to a court of appropriate jurisdiction, in accordance with the procedures outlined in this Section.
1. Administrative disqualification procedures or referral for prosecution action must be initiated whenever there is sufficient documentary evidence to substantiate that an individual has intentionally committed one (1) or more acts of intentional program violation as defined in § 1.9(A)(3) of this Part.
 - a. If the Fraud Unit does not initiate administrative disqualification procedures or refer for prosecution a case involving an over-issuance caused by a suspected act of intentional program violation, an Inadvertent Household Error (IHE) claim is established against the household in accordance with the procedures in § 1.17 of this Part.
 2. The household is informed, in writing, of the disqualification penalties for committing intentional program violation each time it applies for program benefits. The penalties are written in clear, prominent and boldface lettering on the application form.
 3. Disqualification penalties under § 15(b)(1) of the Food and Nutrition Act of 2008 shall be imposed as follows:
 - a. Any member of a household who knowingly uses, transfers, acquires, alters or possess coupons, authorization cards, or access devices in any manner contrary to the Regulations of the Act, can be barred from the Supplemental Nutrition Assistance Program for one (1) year to permanently. S/he may also be fined up to two hundred fifty thousand dollars (\$250,000.00), imprisoned up to twenty (20) years, or both.
 - b. S/he may also be subject to prosecution under other applicable Federal and State laws.
 - c. S/he may also be barred from the SNAP for an additional eighteen (18) months if court ordered. Individuals found to have committed an intentional program violation, either through an administrative disqualification hearing, or by a Federal, State, or local court, or who have signed a waiver of right to an administrative disqualification hearing shall be ineligible to participate in the program:

1. For a period of one (1) year for the first (1st) violation, with the exceptions in numbers §§ 1.9(A)(3)(g), (h), (i), (j) and (l) of this Part;
 2. For a period of two (2) years for the second (2nd) violation, with the exceptions in §§ 1.9(A)(3)(g), (h), (i), (j) and (l) of this Part; and,
 3. Permanently for the third (3rd) occasion of any intentional program violation.
- d. Individuals found by a Federal, State, or local court to have used or received SNAP benefits in a transaction involving the sale of a controlled substance (as defined in the Controlled Substances Act, 21 U.S.C. § 802) shall be ineligible for SNAP benefits:
- (1) For a period of two (2) years for the first (1st) occasion of such violation; and
 - (2) Permanently upon the second (2nd) occasion of such violation.
- e. Individuals found by a Federal, State, or local court to have used or received SNAP benefits in a transaction involving the sale of firearms, ammunition, or explosives shall be permanently disqualified from the SNAP.
- f. Individuals convicted of trafficking SNAP benefits for an aggregate amount of five hundred dollars (\$500.00) or more shall be permanently disqualified from the SNAP upon the first (1st) occasion of such violation. Trafficking means:
- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
 - (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in 21 U.S.C. § 802, for SNAP benefits;
 - (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding

- the product, and intentionally returning the container for the deposit amount;
- (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
 - (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
- g. Individuals found by the Department of having made, or convicted in a Federal or State court, of having made a fraudulent statement or representation with respect to their identity or place of residence in order to receive multiple benefits simultaneously under the Supplemental Nutrition Assistance Program shall be ineligible to participate in the program for a ten (10) year period.
- h. Individuals disqualified from the Food Distribution Program on Indian Reservations (FDPIR) for an intentional program violation as described in this Section, have the same disqualification imposed on the member of the household under SNAP.
- (1) In instances where the disqualification is a reciprocal action based on disqualification from the Food Distribution Program on Indian Reservations, the length of disqualification shall mirror the period prescribed by the Food Distribution Program on Indian Reservations.
 - (2) Dual participation in the Food Distribution Program on Indian Reservations (FDPIR) and SNAP shall not be permitted.
- i. Individuals found guilty by a court of law for buying and selling illegal drugs or certain prescription drugs in exchange for SNAP benefits will be prohibited from participating in the SNAP for twenty-four (24) months for the first (1st) offense and permanently for the second (2nd) offense.
- j. Individuals convicted of Federal aggravated sexual abuse, murder, sexual exploitation and abuse of children, sexual assault, or similar State laws, and who are also not in compliance with the terms of their sentence or parole, or are a fleeing felon, shall be prohibited from receiving SNAP benefits.

4. If a court fails to impose a disqualification period for the intentional program violation, the agency must impose the disqualification period penalties specified in this Section unless it is contrary to the court order. The agency must disqualify only the individual found to have committed intentional program violation or who signed the waiver of right to an administrative disqualification hearing, and not the entire household.
 - a. Even though only the individual is disqualified, the household is responsible for making restitution for the amount of the over issuance. All intentional program violation claims shall be established and collected in accordance with § 1.17 of this Part.
- B. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an intentional program violation as defined in § 1.9(C) of this Part.
- C. Intentional Program violations shall consist of having intentionally as defined in 7 C.F.R. § 273.16(c):
 - (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

1.17 Benefit Over Issuances and Claims

- A. A recipient claim is an amount owed because of:
 1. Benefits that are overpaid, or
 2. Benefits that are trafficked....
 - a. Trafficking is defined as buying or selling of benefit instruments such as EBT cards for cash or consideration other than eligible food.
 - b. This claim is a Federal debt subject to rules governing Federal debts.
- B. Establishing Claims against Households

1. A claim referral is the identification of a potential over issuance that needs to be investigated and established as a claim by the Claims, Collections and Recovery (CCR) Unit.
2. There are three (3) types of claims:
 - a. Intentional Program Violation (IPV)
 - (1) Any claim for an over issuance or trafficking resulting from an individual committing an IPV as defined in § 1.9 of this Part when:
 - (AA) An administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed an IPV; or
 - (BB) An individual is disqualified as a result of signing a waiver of her/his disqualification hearing as discussed in § 1.22 of this Part; or
 - (CC) An individual is disqualified as a result of signing a disqualification consent agreement in a case referred for prosecution as discussed in § 1.22 of this Part.
 - (2) Claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by:
 - (AA) The individual's admission;
 - (BB) Adjudication; or
 - (CC) The documentation that forms the basis for the trafficking determination.
 - (3) Prior to the determination of an intentional program violation or the signing of either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases of deferred adjudication, the claim against the household is handled as an inadvertent household error claim....

1.17.1 Collection of Claims...

F. IPV Claims

1. If a household member is found to have committed an intentional program violation (by an administrative disqualification hearing official or a court of appropriate jurisdiction), or has signed either a waiver of hearing, or a consent agreement, the agency must initiate collection action against the individual's household.
2. The agency must initiate such collection unless the household has already repaid the over issuance, the agency has documentation which shows the household cannot be located, or the agency determines that collection action may prejudice the case against a household member referred for prosecution.
3. The agency initiates collection action for an unpaid or partially paid claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim.
4. In cases where a household member was found guilty of misrepresentation of fraud by a court, or signed a disqualification consent agreement in cases referred for prosecution, the agency requests that the matter of restitution be brought before the court or addressed in the agreement reached between the prosecutor and the accused individual....

1.22 Fair Hearings...

K. Administrative Disqualification Hearings (ADH)

1. An Administrative Disqualification Hearing (ADH) is initiated by the Claims, Collections, and Recoveries (CCR) Unit whenever there is sufficient documentary evidence to substantiate that an individual has committed one (1) or more intentional program violations as defined in § 1.9 of this Part.
 - a. Such cases include alleged intentional program violation claims in discretionary amounts not feasible for prosecution plus those in which the agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system.
 - b. Other cases may be those previously referred for prosecution, but for which prosecution was declined by the appropriate legal authority.
2. The agency may initiate an Administrative Disqualification Hearing regardless of the current eligibility of the individual.

- a. If the individual is not eligible for the program at the time the disqualification period is to begin, the disqualification penalty shall be imposed as if the individual were eligible to participate at the time of the penalty imposition.
3. The administrative disqualification hearing may be conducted regardless of whether other legal action is planned against the household member.
4. Administrative disqualification hearings are held by the Administrative Disqualification Hearing Officer.
 - a. No person who has participated in the issue under review is eligible to serve as a Hearing Officer.
5. The agency publishes clearly written Rules of procedure for disqualification hearings which are made available to any interested party.
6. The agency provides written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a disqualification hearing initiated by the State has been scheduled.
 - a. If the notice is sent first class mail to the individual's address of record being maintained by the Department and is returned as undeliverable, the hearing may still be held.
 - h. In instances in which the individual claims good cause for failure to appear based on a showing of non-receipt of the hearing notice, the individual has thirty (30) days after the date of the written notice of the hearing decision to claim good cause.
7. For all Administrative Disqualification Hearings, ten (10) business days prior to the hearing date, the recipient and the agency must exchange a list of any expert witnesses and exchange expert reports to be presented at the hearing.
 - a. An expert witness is defined as a witness who possesses a special knowledge in a subject of a scientific, mechanical, professional, or technical nature; an expert report is a writing of an expert witness.
 - b. If the recipient does not intend to utilize an expert witness or expert report at the hearing, s/he does not need to exchange such expert witnesses' names and/or reports.
 - c. Failure to include such a witness or document prevents that party from presenting that witness or document at the hearing, unless the

hearing officer finds that good cause exists for the failure to produce.

- (1) If good cause is found to exist, the other party may request a continuance to consider and review the previously undisclosed evidence.
 - (2) If the agency representative receives a request to review the evidence and/or case file before the hearing, a review should be planned by contacting the CCR Unit.
8. The household, or its representative, must be given adequate opportunity to examine all documents and records to be used at the hearing, at a reasonable time before the date of the hearing, as well as during the hearing.
 - a. The contents of the case file, including the application form and documents of verification used by the agency representative to establish the household's ineligibility, or eligibility and allotment, must be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge, or the nature or status of pending criminal prosecutions, is protected from release.
 - b. If requested by the household or its representative, the agency representative must provide the relevant portions of the case file. All pertinent evidence and documents pertaining to the disqualification hearing will be available for inspection at the Office of the ADH Officer.
 - c. Confidential information that is protected from release, and other documents or records which the household will not otherwise have an opportunity to contest or challenge, must not be presented at the hearing to affect the Hearing Officer's decision.
9. At the disqualification hearing, the Hearing Officer must advise the household member, or representative, that they may refuse to answer questions during the hearing.
 - a. This refusal must, in no way prejudice the Hearing Officer's decision on the issues.
10. The household must also have the opportunity to:

- a. Present the case itself, or have it presented by a legal counsel or other person;
 - b. Bring witnesses;
 - c. Advance arguments without undue interference;
 - d. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and,
 - e. Submit evidence to establish all pertinent facts and circumstances in the case.
11. The hearing is attended by the representative(s) of the agency which initiated the action being contested and by the household and/or its representative.
- a. The hearing may also be attended by friends and relatives of the household if the household so chooses.
 - b. However, the Hearing Officer has the authority to limit the number of persons in attendance at the hearing if it is determined that space limitations exist.
12. The hearing decision record must be retained for three (3) years and must also be available to the household or its representative for inspection and copying at any reasonable time.
- a. A decision by the Administrative Disqualification Hearing Officer is binding on the agency and must summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Regulations or policy.
 - b. The household is notified that it has the right to pursue judicial review of an adverse hearing decision.
 - c. The household and the agency representative are notified in writing of:
 - (1) The decision;
 - (2) The reasons for the decision; and
 - (3) The available appeal rights.

13. If the household member, or its representative, cannot be located or fails to appear at the hearing without good cause, the hearing is conducted without the household member represented.
 - a. If the household member is found to have committed an intentional program violation, but the Hearing Officer later determines that the household member, or representative, had good cause for not appearing, the previous decision must no longer remain valid and the agency must conduct a new hearing.
 - (1) The hearing official who originally ruled on the case may conduct the new hearing.
 - b. In instances in which the individual claims good cause for failure to appear based upon a showing of non-receipt of the hearing notice, the individual has thirty (30) days after the date of the written notice of the hearing decision to claim good cause.
 - (1) In all other instances, the household member has ten (10) days from the date of the scheduled hearing to present reasons indicating good cause for failure to appear.
 - (2) The individual shall provide evidence of the non-receipt of the hearing notice to the Administrative Disqualification Hearing Officer for consideration....

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.