

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

RI DEPARTMENT OF HUMAN SERVICES

v.

DOCKET No. 21-1345

[REDACTED]

DECISION

I. INTRODUCTION

A telephonic hearing on the above-entitled matter was conducted by an Administrative Disqualification Hearing Officer on August 10, 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 failed to report unearned income, specifically unemployment benefits. 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 \$642.00 he received but was not entitled to during the time period from November 1, 2020 through January 31, 2021. For the reasons discussed in more detail below, the Administrative Disqualification Hearing has been decided partially in the Agency’s favor.

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 Chao Wang (hereinafter “Auditor Wang”) investigated the Respondent’s case and attended the telephonic hearing. Auditor Wang provided testimony based on the facts established in determining an IPV of the SNAP regulations. The Agency offered the following evidence at hearing:

1. Verification from the Rhode Island Department of Labor and Training (hereinafter “DLT”) of Unemployment Benefits (hereinafter “UEB”) received by the Respondent

for the time period from August 18, 2020 through January 10, 2021, marked as Agency Exhibit #1.

2. A SNAP Recertification Form signed by the Respondent on November 30, 2020, marked as Agency Exhibit #2.
3. A calculation of SNAP Overpayments to the Respondent for the months of November 2020, December 2020, and January 2021, marked as Agency Exhibit #3.
4. Documentation of an online query of the Electronic Disqualified Recipient System (hereinafter “eDRS”), marked as Agency Exhibit #4.
5. Copy of a SNAP packet, consisting of a letter, waiver rights, and a waiver agreement form, sent to the Respondent on February 25, 2021, marked as Agency Exhibit 5.

The Respondent, [REDACTED], did not attend the telephonic hearing. In accordance with 7 CFR 273.16 (e)(4) and 218-RICR-20-00-1, Section 1.22 K (13), the hearing was conducted without the Respondent present or represented.

VI. RELEVANT LAW and/or REGULATIONS

7 CFR 273.16, entitled “Disqualification for Intentional Program Violation” (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 (c)(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 its federal counterpart, the RI regulations require “clear and convincing evidence” that the household member(s) committed or intended to commit, an IPV.

If an overpayment of SNAP benefits results from an IPV, the Agency must establish and collect the claim in accordance with 7 CFR 273.18 entitled “Claims against household” and State regulation 218 RICR 1.17 entitled “Benefit Over Issuances and Claims”.

VII. FINDINGS OF FACT

1. Auditor Wang testified that her investigation commenced upon receipt of a fraud referral from DHS on January 27, 2021, claiming that the Respondent had failed to report unemployment income.

2. Auditor Wang testified that the Respondent had been collecting SNAP benefit since August 23, 2017, and that on or about November 30, 2020, DHS received the Respondent’s SNAP Recertification Form for continuation of his SNAP benefits.

3. Page one (1) of the SNAP Recertification Form provided clear directions on how to complete and submit the Recertification Form.

4. The question “Is anyone in the household unemployed or only working part time?” appears on page four (4) of the SNAP Recertification Form. Information regarding

employment, job training, and receipt of Unemployment Compensation in the prior 12 months is also requested. No response and/or information was provided by the Respondent.

5. The question “Do you or anyone in your household, including children, receive ANY OTHER income that IS NOT from a job or self-employment?” appears on page six (6) of the SNAP Recertification Form. Examples of income are listed, including SSI/RSDI and Unemployment Insurance. The Respondent answered that he was receiving monthly SSI of \$783.00. He did not report receiving any UEB.

6. The Respondent affixed his signature and a date of 11/30/2020 on page 8 of the Recertification Form, immediately under the Penalties for Perjury statement which reads “I certify under penalty of perjury that I have read (or had read to me) and I understand the Notice of Rights, Responsibilities and Penalties and that my answers are correct, including information about citizenship and alien status, and complete to the best of my knowledge and belief. I know that under the state of Rhode Island General Laws, Section 40-6-15, a maximum fine of \$1,000, or imprisonment of up to five (5) years, or both, may be imposed for a person who obtains or attempts to obtain, or aids or abets any person to obtain, public assistance to which s/he is not entitled, or who willfully fails to report income, resources or personal circumstances or increases therein which exceed the amount previously reported.”

7. On or about February 12, 2021, Auditor Wang received verification from DLT that the Respondent had received a weekly UEB of \$183.00, from August 18, 2020 through January 10, 2021.

8. Auditor Wang testified that the addition of the Respondent’s UEB caused his total gross income to exceed 130% Federal Poverty Level (hereinafter “FPL”) in the month of September 2020, and as a SNAP Simplified Reporter he was thereby required to report his UEBs

in October 2020, for consideration in determining his SNAP eligibility and benefit amount for November 2020.

9. The Agency added the Respondent's UEB, as verified by DLT, and calculated an over issuance of SNAP benefits for the months of November 2020, December 2020, and January 2021, totaling \$642.00.

10. On February 12, 2021, Auditor Wang logged into the eDRS to determine the Respondent's disqualification period. There were no results found, therefore this is the Respondent's first offense, and the Agency is pursuing a one (1) year disqualification.

11. On February 25, 2021, Internal Auditor Wang mailed a SNAP Packet to the Respondent's address of record. The SNAP Packet included a letter and a Waiver of Right to Administrative Disqualification Hearing, explaining the alleged fraudulent activity, the amount and dates of the alleged SNAP over issuance, and the disqualification penalty, and informed the Respondent he had ten (10) days to dispute the charge and/or sign and return the enclosed waiver agreement before his case would be referred to the Attorney General for possible criminal prosecution or to the Appeals Office for a SNAP Administrative Disqualification Hearing.

12. Internal Auditor Wang testified that no response was received from the Respondent and her attempts to contact the Respondent by telephone was unsuccessful because the Respondent's telephone number had been disconnected. Having received no response, the Agency requested an Administrative Disqualification Hearing be scheduled.

13. On July 6, 2021, an Advance Notice of Administrative Disqualification Hearing ("RIFS-121C") was sent by first class mail to the Respondent's address of record to inform him of the hearing scheduled to be heard telephonically on August 10, 2021 at 1:30 PM. The Advance Notice of Administrative Disqualification Hearing stated the alleged SNAP violation,

the disqualification penalty, and the alleged amount of the over issuance. Also included with the notice was the Waiver of Right to Administrative Disqualification Hearing and Waiver Agreement. In accordance with 7 CFR 273.16 (e)(3) and 218-RICR-20-00-1, Section 1.22 K (6), EOHHS provided at least thirty (30) days advance notice, in writing of the scheduling of the disqualification hearing.

14. A telephonic Administrative Disqualification Hearing was held on August 10, 2021.

VIII. DISCUSSION

The Agency maintains that the Respondent intentionally violated a SNAP program rule between November 1, 2020 and January 31, 2021, when he failed to report his UEB as unearned income on the SNAP Recertification Form he signed on November 30, 2020, and that as a result he received SNAP benefits in the months of November 2020, December 2020, and January 2021 totaling \$642.00 for which he was not eligible. The Agency further maintains that the Respondent was aware of his responsibility to provide correct information and aware of the consequences of providing incorrect information and should be found to have committed an IPV, be disqualified from the SNAP program for a period of one (1) year and be required to repay the \$642.00 in SNAP benefits he received but was not entitled to.

The record consists exclusively of the evidence and testimony from the Agency, as the Respondent did not attend the hearing. The evidence establishes that the Respondent submitted a SNAP Recertification Form to continue receiving SNAP benefits as a household of one. The Respondent signed the Recertification on November 30, 2020, directly under the “PENALTY FOR PERJURY” statement attesting that he understood the Notice of Rights, Responsibilities and Penalties that had been provided to him, and that his answers were correct and complete to

the best of his knowledge and belief. In completing the SNAP Recertification, the Respondent reported a monthly SSI benefit of \$783.00 as his only income. Documentary evidence submitted by the Agency establishes that at the time the Respondent signed his SNAP Recertification, he was receiving a weekly UEB of \$183.00, which he began receiving on August 18, 2020. The Respondent was asked on Page six (6) of the Recertification Form if he had any income that was not from a job, and the question listed both SSI benefits and Unemployment Insurance as examples of such income. The Respondent only reported receipt of an SSI benefit. Based on the above, it is clear the Respondent intentionally provided false information and/or concealed information, and/or otherwise intentionally failed to report his UEB on his SNAP Recertification Form as required, and despite knowing the penalty for perjury. Accordingly, there is clear and convincing evidence that the Respondent violated the SNAP regulations and committed an IPV. An eDRS query established that this was the Respondent's first violation, thereby warranting a one year penalty.

As to the amount and dates of the over issuance of SNAP benefits that is alleged to have resulted from the IPV, the Agency testified that the Respondent was classified as a SNAP "Simplified Reporter" and as such he was, per SNAP regulation 218 RICR20-00-1 Section 1.13 entitled "Ongoing Case Management", not only required to report his UEB on his SNAP Recertification Form but was required to report the UEB when his gross monthly income exceeded 130% of the FPL. The Agency testified that the Respondent's combined income of SSI and UEB first exceeded 130% of the FPL in September 2020, thereby requiring him to report the UEB in October 2020, for consideration in determining his SNAP eligibility and benefits for November 2020. The Agency's calculations established that had the UEB been included as of

November 2020, the Respondent would not have been eligible for any SNAP benefits for the time period from November 1, 2020 through January 31, 2021.

The record establishes that the Respondent reported receiving SSI on his Recertification Form. No information was requested as to when he began receiving SSI and none was provided. A full review of the record finds no evidence from the Agency to clearly establish that the Respondent was receiving SSI prior to reporting it on his Recertification Form in November 2020. The record thereby fails to establish that the Respondent was receiving both UEB and SSI in September 2020 or October 2020 and/or that his income exceeded 130% of the FPL in those months. The evidence establishes that the Respondent's combined SSI and UEB did exceed 130% of the FPL at the end of November 2020. As a Simplified Reporter he would thereby be required to report the UEB in December 2020 if he had not already completed his Recertification on November 30, 2020, which required him to report the income on that date. Had the Respondent reported his UEB on his Recertification Form, the inclusion of the UEB would not have affected his SNAP eligibility and/or benefits until January 2021. The over issuance of SNAP benefits resulting from the IPV must thereby be calculated beginning with the month of January 2021. The Respondent received SNAP benefits in the amount of \$234.00 for January 2021. The evidence establishes that had the UEB been reported on the Recertification Form, the Respondent would not have been eligible for any SNAP benefits as of January 1, 2021.

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 intentionally, by omission, failed to report unearned income, specifically UEB, on the SNAP Recertification Form he signed and submitted to DHS for continuation of his SNAP benefits.

2. The Respondent was aware of the penalty of perjury, upon affixing his signature on the Recertification Form on November 30, 2020, under the "PENALTIES FOR PERJURY" statement, attesting that all his answers were correct and complete to the best of his knowledge.

3. The Agency has demonstrated by clear and convincing evidence that the Respondent knowingly made a false statement on his SNAP Recertification relative to his unearned income. Therefore, the Respondent intentionally misrepresented, concealed, or withheld facts pertinent to his SNAP case.

4. The Agency has demonstrated by clear and convincing evidence that the Respondent committed an IPV of the SNAP regulations, by not reporting his UEB upon submission of his SNAP Recertification Form.

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) and SNAP Regulation 218-RICR-20-00-1, Section 1.9 (A)(3)(c)(1), 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) year, as this is his first (1st) IPV.

6. Per Title 7 CFR 273.18 and SNAP Regulation 218-RICR-20-00-1 Section 1.17.1, the Respondent is required to repay the \$234.00 in SNAP benefits he received in the month of January 2021 but was not entitled to.

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 is granted. The Agency's request for repayment is granted in the adjusted amount of \$234.00.

AGENCY'S INTENTIONAL PROGRAM VIOLATION CHARGE IS GRANTED

/s/Debra DeStefano
Administrative Disqualification Hearing Officer

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.

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.

(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.

(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.

(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.

(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

I.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.
- 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).

1.13 Ongoing Case Management

1.13.1 Changes

- A. For reporting changes during a SNAP household's certification period, there are two (2) classifications:
1. Change Reporters: A household that is designated as a "change reporter" must report any change in circumstances, income, resources, and expenses which occur during their certification period within ten (10) days of the date the change becomes known to the household.
 - a. The following types of households are change reporters:
 - (1) Households with no earned income and in which all members are elderly or disabled; and
 - (2) Households which include migrant and seasonal farmworkers.
 2. Simplified Reporters: All other households are simplified reporters.
 - a. With the exception of the interim report and lottery/gambling winnings (see below), a simplified reporting household's sole reporting requirement is to report changes in income which bring the household's gross income in excess of the gross income eligibility standard for that size household by the tenth (10th) day of the month following the month in which the change occurred.
 - (1) If a household has an increase in its income, it must determine its total gross income at the end of the month. If the total gross income exceeds the household's SNAP gross income eligibility

standard, the household must report the change no later than ten (10) days from the end of the calendar month in which the change occurred, provided that the household receives the payment with at least ten (10) days remaining in the month.

(AA) If there are not ten (10) days remaining in the month, the household must report within ten (10) days from receipt of the payment.

(2) Whenever a member of the household wins substantial lottery or gambling winnings.

(AA) Simplified reporting households must report a cash prize won in a single game, before taxes or other amounts withheld, which is equal to or greater than the elderly and/or disabled resource limit as defined in § 1.5.5 of this Part.

(3) No other change reporting is required during the certification period.

b. A "simplified reporter" household must submit an Interim Report Form in its sixth (6th) month of certification.

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 CCR Unit.

2. There are three (3) types of claims:

a. Intentional Program Violation

- (1) Any claim for an over issuance or trafficking resulting from an individual committing an intentional program violation (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...

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.

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.
 - b. 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....

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 Chao Wang, Brittny Badway, and Kimberly Seebeck, DHS

representative Denise Tatro, and DOR representatives Karen Vincent and Edmund Murray
on this 16th day of September, 2021.

Edmund Murray