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

RI DEPARTMENT OF HUMAN SERVICES

v.

[redacted]

DOCKET No. 21-1355

DECISION

I. INTRODUCTION

A telephonic hearing on the above-entitled matter was conducted by an Administrative Disqualification Hearing Officer on August 24, 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 earned income, specifically his wages from [redacted]. 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 an over issuance of SNAP benefits totaling $566.00 he received but was not entitled to during the time period from March 1, 2020 through May 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 Senior Internal Auditor Brittny Badway (hereinafter "Auditor Badway") investigated the Respondent's case and attended the telephonic hearing. Auditor Badway provided testimony based on the facts established in determining an IPV of the SNAP regulations. The Agency offered the following evidence at hearing:

1. RIBridges Department of Labor and Training (hereinafter "DLT") Interface of Unemployment Benefits (hereinafter "UEB") received by the Respondent, marked as

Agency Exhibit #1.

2. RIBridges DLT Interface of Temporary Disability Insurance (hereinafter "TDI") received by the Respondent, marked as Agency Exhibit #2.
3. A copy of page #1 of a DLT "BENEFIT PAYMENT NOTICE" dated November 6, 2020 and a copy of page #2 of a "CLAIMANT DECISION" dated October 9, 2020, marked as Agency Exhibit #3.
4. Search results of "The Work Number" Social Services Verification, marked as Agency Exhibit #4.
5. A SNAP Six-Month Interim Report, signed by the Respondent on February 24, 2020, marked as Agency Exhibit #5.
6. A calculation of SNAP Overpayments to the Respondent for the months of March, April, and May 2020, marked as Agency Exhibit #6.
7. Documentation of an online query of the Electronic Disqualified Recipient System (hereinafter "eDRS"), marked as Agency Exhibit #7.
8. A copy of a SNAP packet, consisting of a letter, waiver rights, and a waiver agreement form, sent to the Respondent on January 12, 2021, marked as Agency Exhibit #8.
9. An email from the Respondent to Auditor Badway dated January 15, 2021, with images scaled from that email, marked as Agency Exhibit #9.
10. Search Results of the DHS eligibility system verifying the issuance of SNAP benefits to the Respondent for the months of March, April, and May 2020, marked as Agency Exhibit #10.
11. Copy of a SNAP packet, consisting of a letter, waiver rights, and a waiver agreement

form, sent to the Respondent on January 25, 2021, marked as Agency Exhibit #11.

12. An email from Auditor Badway to the Respondent dated February 9, 2021, marked as Agency Exhibit #12.

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 (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 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. Per Auditor Badway's testimony, her investigation commenced on or about September 26, 2020, upon receipt of a fraud referral from DHS claiming that the Respondent had failed to report Employment Income, UEB, and TDI.

2. Upon investigation, Auditor Badway initially concluded that the Respondent had intentionally and fraudulently failed to report both earned and unearned income to DHS, and as a result received an over issuance of SNAP benefits totaling $1,148.00 for the period of March 1, 2020 through September 30, 2020.

3. On January 12, 2021, Auditor Badway sent a SNAP Packet to the Respondent's address of record. The SNAP Packet included a letter, a Waiver Agreement Form, and a Waiver of Right to Administrative Disqualification Hearing letter, which in combination explained the alleged fraudulent activity, the amount and dates of the alleged SNAP over issuance, and the disqualification penalty, and informed the Respondent he had until January 20, 2021, 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.

4. Upon receipt of additional information from the Respondent, Auditor Badway amended her findings and concluded that the Respondent had intentionally and fraudulently

failed to report only earned income to DHS, and as a result received an over issuance of SNAP benefits totaling $566.00 for the period of March 1, 2020 through May 31, 2020.

5. Per Auditor Badway's testimony, the Respondent's UEB, which he began receiving on May 26, 2020, were no longer counted and the overpayments previously calculated for the months of June through September 2020 were removed from the claim because she received documentation from the Respondent verifying that he has to pay back those benefits.

6. On January 25, 2021, Auditor Badway sent a revised SNAP Packet to the Respondent's address of record. The SNAP Packet included a letter, a Waiver Agreement Form, and a Waiver of Right to Administrative Disqualification Hearing notice, which in combination explained the alleged fraudulent activity, the amount and dates of the alleged SNAP over issuance, and the disqualification penalty, and informed the Respondent he had until February 2, 2021, 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.

7. Having received no response to either the January 25, 2021 SNAP packet, a February 9, 2021 email from Auditor Badway, and/or a February 24, 2021 telephone call from Auditor Badway, the Agency requested an Administrative Disqualification Hearing be scheduled.

8. On July 22, 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 24, 2021 at 9:00 AM. 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.

9. The Respondent was required to submit a SNAP Six-Month Interim Report (hereinafter "IR") for continuation of SNAP benefits beyond March 31, 2020. A date stamp, though partially illegible, verifies DHS's receipt of the Respondent's IR at the end of February 2020.

10. Page one (1) of the SNAP IR provided clear directions on how to complete and submit the IR, specifically directing the Respondent to answer all questions on the form; correct any incorrect information; add any new information; sign and date the form; attach all required documentation when information has changed; and return the completed form by March 5, 2020.

11. Question 1982 on page three (3) and four (4) of the IR requests information about job income and states: "You must tell us below if a household member changed, started, or ended a job, and if it led to a change in income." The Respondent did not report his employment with and/or wages from [redacted] and checked off "No Change" to the household's $0.00 income.

12. The Respondent affixed his signature and a date of 2/24/20 on page seven (7) of the IR immediately under the Penalties for Perjury statement which reads "Under penalty of perjury, I attest that all of my answers on this form are correct and complete to the best of my knowledge. 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.

13. Per the Work Number, an employment verification database, the Respondent was

rehired by [redacted]. on January 13, 2020; was paid weekly; received his first check on January 24, 2020; was terminated on April 17, 2020; and received his last paycheck on April 24, 2020.

14. Per Auditor Badway's testimony and the documentary evidence submitted, the Respondent received $194.00 in SNAP benefits for each of the months of March, April, and May 2020. The Agency maintains that had the Respondent reported his employment income, he would have been eligible for $16.00 of SNAP benefits in March 2020, and $0.00 SNAP benefits in each of the months of April and May 2020.

15. Per Auditor Badway's testimony and the eDRS, this is the Respondent's first IPV and the Agency is thereby pursuing a one (1) year disqualification.

16. Auditor Badway testified that the Respondent's failure to report the TDI benefits he received beginning June 4, 2020, is considered an unintentional household error, and will be referred to the DHS Claims, Collections, Recovery Unit (hereinafter "CCRU") to determine if those payments resulted in an over issuance of SNAP benefits.

VIII. DISCUSSION

The Agency maintains that the Respondent intentionally violated a SNAP program rule between March 1, 2020 and May 31, 2021, when he failed to report his earned income on the SNAP Six-Month Interim Report (hereinafter "IR") he signed on February 24, 2020, and as a result received SNAP benefits in the months of March, April, and May 2020, totaling $566.00 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 $566.00 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 IR to continue receiving SNAP benefits as a household of one. The Respondent signed the IR on February 24, 2020, directly under the "PENALTIES FOR PERJURY" statement attesting that his answers on the form were correct and complete to the best of his knowledge, and that he understood he would be breaking the law if he purposely gave wrong information and could be punished under federal and/or state law if he did so. While the receipt date stamp is difficult to read, when viewed in conjunction with the signature date, it appears the IR was received by DHS on February 28, 2020. Question 1982 on the IR clearly asked the Respondent if he had job income and informed him that he was required to report if he had changed, started, or ended a job. The Respondent did not report any employment and/or job income and checked off "no change" to a stated gross job income of $0.00. Documentary evidence submitted by the Agency establishes that the Respondent was actively employed when he signed his SNAP IR, having been rehired by [redacted] on January 13, 2020 and terminated on April 17, 2020. The Respondent received weekly wages from January 24, 2020 through April 24, 2020.

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 employment and/or job income on his SNAP IR 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.

The Agency submitted an overpayment calculation worksheet and cited SNAP regulation 218 RICR20-00-1 Section 1.13 Section 1.A.2.a. for reference as to income reporting requirements for a simplified reporter, to explain how they determined the amount of SNAP benefits overpaid to the Respondent as a result of the IPV. The record of hearing establishes that the Respondent received $194.00 in SNAP benefits for each of the months of March, April, and May 2020. The Agency maintains that had the Respondent reported his employment income as required, he would have been eligible to receive $16.00 in SNAP benefits in March, and $0.00 SNAP benefits in each of the months of April and May. The Agency failed to offer a clear explanation as to how or why they determined the first month of over payment to be March 2020. A review of the cited regulation 218 RICR20-00-1 Section 1.13.1 entitled Ongoing Case Management-Changes, finds that simplified reporters must report changes in income when their total gross monthly income exceeds the household's SNAP gross income eligibility standard. When this occurs with at least ten days remaining in the month, the household must report the change/income no later than ten days from the end of the calendar month in which the change occurred. When there are not ten days remaining, the household must report within ten days from receipt of the payment. If a change in income does not cause the household to exceed the gross income standard then the change in income must be reported upon submission of their IR, which must be submitted in the household's sixth (6^{th}) month of certification. Figures pertaining to 130% and 185% of the Federal Poverty Level (hereinafter "FPL") appear on the overpayment worksheet, but the Agency offered no testimony as to what the appellant's gross income limit was and/or what income threshold would have required the Respondent to report receiving his earned income prior to the submission of his IR. The record of hearing thereby fails to establish that the Respondent was required to report his job income prior to submission of his SNAP IR.

The documentary evidence establishes that the Respondent's IR was due for submission by March 5, 2020, as his SNAP certification period ended on March 31, 2020. The Respondent submitted his IR on February 28, 2020, but failed to report on the IR that he was employed and/or receiving job income. Had the Respondent reported his earned income on the IR, the income would have been considered in calculating his SNAP benefits effective April 1, 2020. In summary, the Agency has failed to clearly establish that an over issuance of SNAP benefits began in the month of March 2020.

Federal regulation 7 CFR 273.18 entitled "Claims against households" Section (c)(ii) outlines the procedure for calculating claims not related to trafficking. To determine the overpayment amount, the Agency must determine the correct amount of benefits for each month that a household received an overpayment and then subtract that amount from the amount of benefits the household actually received. Further review of the SNAP overpayment worksheet finds that the Agency maintains that the Respondent had earned income of $1,739.63 in each of the months of March, April, and May 2020, and unearned income of $900.00 in each of the months of April and May 2020. Other than the submission of documentation of the Respondent's weekly pays from January 24, 2020 through April 24, 2020, the Agency offered no explanation as to how they determined that the Respondent had a countable monthly earned income of $1,739.63 in each of the months of March, April and May. SNAP regulation 218-RICR-20-00-1 Section 1.6.8C entitled "Income Budgeting" stipulates how to determine monthly income for the purposes of determining a household's SNAP eligibility and monthly SNAP allotment utilizing actual and/or anticipated income, as well as how to convert weekly income to monthly income. The documentary evidence of the Respondent's earned income fails to establish income for the months of March, April, and/or May 2020 in the amount of $1,739.63

utilizing these rules. Additionally, the appellant did not report any unearned income on his IR, and the Agency offered no testimony or evidence to establish that the Respondent received any unearned income in the months of April or May 2020, other than the unemployment benefits he began receiving on May 26, 2020, but which the Agency testified was not counted and/or included in the overpayment calculation. In summary, while the Respondent's earned income should have been considered when determining his SNAP benefits, the Agency has failed to establish that the amount of earned and unearned income they utilized to determine the Respondent's correct SNAP eligibility and/or allotment amounts in the months of March, April and/or May 2020 is accurate, and has thereby failed to establish that the Respondent would have received $566.00 less in SNAP benefits had his earned income been reported and considered.

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 his employment and earned income, specifically his employment with and wages from [redacted] on the SNAP IR he signed and submitted to DHS for continuation of his SNAP benefits.

The Respondent was aware of the penalty of perjury, upon affixing his signature on the IR on February 24, 2020, under the "PENALTIES FOR PERJURY" statement, attesting that all his answers were correct and complete to the best of his knowledge.

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

3. The Agency has demonstrated by clear and convincing evidence that the Respondent committed an IPV of the SNAP regulations, by not reporting his employment income upon submission of his SNAP IR.

4. 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.

5. The Agency has failed to clearly establish that the Respondent was overpaid SNAP benefits in the amount of $566.00 during the time period from March 1, 2020 through May 31, 2020.

6. Consequently, the Respondent is not required to repay the $566.00 of SNAP benefits that was alleged to have been over issued to him.

X. <u>DECISION</u>

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 in the amount of $566.00 is denied.

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 disqualifed 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. …

7 CFR 273.18 Claims against households.

(a) *General.* (1) A recipient claim is an amount owed because of:

(i) Benefits that are overpaid or

(ii) Benefits that are trafficked. Trafficking is defined in 7 CFR 271.2.

(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections similar to recent national rates of collection. If you do not meet these standards, you must take corrective action to correct any deficiencies in the plan.

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred;

(ii) A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.

(b) *Types of claims.* There are three types of claims:

An . . .	is . . .
(1) Intentional Program violation (IPV) claim	any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in § 273.16.
(2) Inadvertent household error (IHE) claim	any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.
(3) Agency error (AE) claim	any claim for an overpayment caused by an action or failure to take action by the State agency.

(c) *Calculating the claim amount* - (1) *Claims not related to trafficking.*

(i) As a State agency, you must calculate a claim . . .	and . . .	and . . .
back to at least twelve months prior to when you become aware of the overpayment	for an IPV claim, the claim must be calculated back to the month the act of IPV first occurred	for all claims, don't include any amounts that occurred more than six years before you became aware of the overpayment.

(ii) The actual steps for calculating a claim are

you . . .	unless . . .	then . . .
(A) determine the correct amount of benefits for each month that a household received an overpayment		
(B) do not apply the earned income deduction to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim	the claim is an AE claim	apply the earned income deduction.
(C) subtract the correct amount of benefits from the benefits actually received. The answer is the amount of the overpayment	this answer is zero or negative	dispose of the claim referral.
(D) reduce the overpayment amount by any EBT benefits expunged from the household's EBT benefit account in accordance with your own procedures. The difference is the amount of the claim	you are not aware of any expunged benefits	the amount of the overpayment calculated in paragraph (c)(1)(ii)(C) of this section is the amount of the claim.

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PART 1 – Supplemental Nutrition Assistance Program

1.6.8 Financial Verification

C. Income Budgeting

1. For the purpose of determining a household's eligibility and monthly allotment, the agency representative takes into account the income already received by the household during the certification period and any anticipated income the household and the agency representative are

reasonably certain will be received during the remainder of the certification period.

a. If the amount of income that will be received, or when it will be received, is uncertain, the portion of the household's income that is uncertain is not counted by the agency representative.

2. Income received during the past thirty (30) days is used as an indicator of anticipated income. However, past income is not used for any month in which a change in income has occurred or can be anticipated.

a. If income fluctuates to the extent that a thirty (30) day period alone cannot provide an accurate indication of anticipated income, the agency representative may use a longer period of past time if it provides an accurate indication of anticipated income.

b. If the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last thirty (30) days, as one (1) indicator of anticipated income.

c. In many cases of seasonally fluctuating income, the income also fluctuates from one (1) season in one (1) year to the same season in the next year.

(1) In no event may the agency representative automatically attribute to the household the amounts of any past income.

(2) The agency representative may not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

3. Cases with Earnings

a. In cases where the head of the household is steadily employed, income from previous months is usually a good indicator of the amount of income which can be anticipated in the month of application and subsequent months.

b. Hourly and Piece Work Wages

(1) When income is received on an hourly wage or piece work basis, weekly income may fluctuate if the wage earner works less than eight (8) hours some days or is required to work overtime on others.

(2) When determining the amount of anticipated income, review pay stubs from the previous four (4) weeks in order to determine a weekly average.

c. Withheld Wages: Wages withheld at the request of the employee must be considered income to the household in the month the wages would otherwise have been paid by the employer.

(1) However, wages withheld by the employer as a general practice, even if in violation of law, are not counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or the household anticipates that it will receive income from wages that were previously held by the employer as general practice and that were, therefore, not previously counted as income by the agency.

d. Advances on wages must only count as income if reasonably anticipated.

4. Verification of Income

a. Gross non-exempt income must be verified for all households prior to certification.

(1) However, where all attempts to verify income have been unsuccessful because the income provider fails to cooperate with the household and the agency representative, and because all other sources of verification are unavailable, the agency representative must determine an amount to be used, based on the best available information.

5. Averaging Income

a. Whenever a full month's income is anticipated but is received on a weekly basis, the agency representative converts the income to a monthly amount by multiplying the weekly income by 4.3333.

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.

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 Brittny Badway and Kimberly Seebeck, DHS representative Denise Tatro, and DOR representatives Karen Vincent and Edmund Murray on this 5th day of November, 2021.

Kelvin L Adler