

**BEFORE THE BOARD OF PUBLIC ASSISTANCE APPEALS
OF THE STATE OF MONTANA**

In the matter of the Food Stamp
Administrative Disqualification Hearing
of Claimant

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**ADMINISTRATIVE
DISQUALIFICATION
DECISION No. 04-265**

After proper notice, an Administrative Disqualification Hearing was held by telephone between the Lake County Office of Public Assistance, Polson, Montana, and the Hearing Officer, Office of Fair Hearings, Helena, Montana, on December 3, 2003 to seek disqualification of Claimant from receiving Food Stamps for 12 months as requested by Lake County Office of Public Assistance due to an alleged intentional program violation. From the record, the Hearing Officer now makes the following disposition of the case.

REPRESENTATION

Erna Brown, Program Integrity Investigator, represented Lake County Office of Public Assistance (hereinafter Lake County). Claimant did not appear for his Administrative Disqualification Hearing. A return receipt certified notice was sent to Claimant on October 30, 2003, advising him of the time, date and place of the Administrative Disqualification Hearing. Claimant signed for the notice on November 11, 2003. The hearing can be held as the State agency has discharged its responsibility under 7 CFR 273.16(e)(3) by sending notice through certified mail. The hearing may be conducted without the household member present which is allowed at 7 CFR 273.16(e)(4).

IDENTIFYING INFORMATION

On July 21, 2003, Claimant applied for expedited Food Stamps in Montana. At the time he applied for benefits, Lake County alleges that he signed and checked that

he had not received Food Stamps in the last 30 days, that he had been a resident of State and that he understood the penalty for giving false information. By phone call and follow-up fax, Montana learned that Claimant had received Food Stamps in State for July 2003. On that basis Lake County alleges that Claimant has intentionally violated a program rule by making a fraudulent statement or representation with respect to his Food Stamp benefits in order to receive multiple benefits simultaneously under the Food Stamp Program and he should therefore be disqualified from the Food Stamp Program for twelve months.

FINDINGS OF FACT

1. On July 21, 2003, Claimant applied for Food Stamps at the Lake County Office of Public Assistance. On the first page of the application he was asked if anyone in his household received Food Stamps in the last 30 days and Claimant checked the "No" box.

2. Claimant stated on the application that he came from State and was a migrant farm worker. A call to State showed that he had received Food Stamp benefits in the amount of \$139 for July 2003. State issued these Food Stamps to Mr. Acevedo on June 21, 2003.

3. There is no question that Claimant was issued Food Stamp benefits for July 2003 in State and that he denied receiving Food Stamp benefits in State.

CONCLUSIONS OF LAW

1. When there is sufficient documentary evidence to substantiate that an individual made a false or misleading statement or misrepresented or withheld facts, then it is the responsibility of Lake County to request an Administrative Disqualification Hearing or refer to a court of appropriate jurisdiction. 7 CFR 273.16(a).

2. 7 CFR 273.16(b) provides for the disqualification penalties as follows: for

a period of twelve months for the first intentional program, for a period of twenty-four months upon the second occasion of any intentional program violation, and permanently for the third occasion of any intentional program violation. An individual found to have made a fraudulent statement or misrepresentation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the program for a period of ten years.

3. Pursuant to 7 CFR 273.16(e)(6), the hearing authority shall base the determination of an intentional program violation on clear and convincing evidence which demonstrates that the household member committed, and intended to commit, an intentional program violation. Clear and convincing evidence has been presented that Claimant committed an intentional program violation by representing on the Food Stamp application that he had not received Food Stamp benefits from anyone else for July 2003. Claimant was issued Food Stamps for July 2003 in State, yet applied for Food Stamps in Montana for July 2003. However, he did disclose that he came from State. Claimant signed the Montana Food Stamp application certifying under penalty of perjury that his answers on the application were correct and complete to the best of his knowledge. It is clear from the record that Claimant made a fraudulent statement and representation with respect to his receipt of Food Stamp benefits as a resident of State in order to receive multiple benefits in the same month in Montana.

4. Individuals found to have committed an intentional program violation either through an Administrative Disqualification Hearing or by a court of appropriate jurisdiction shall be disqualified from participation in the Food Stamp program for 12 months for the first intentional violation, 24 months for the second violation, permanently for the third violation, and for 10 years for misrepresenting residency or identity to obtain multiple benefits. 7 CFR 273.16(b). Lake County has properly

determined that Claimant should be disqualified from the Food Stamp Program for a period of 12 months because he attempted to obtain Food Stamp benefits in Montana while receiving Food Stamp benefits in State for the same month.

ORDER

Lake County Office of Public Assistance has properly determined that Claimant committed an intentional Food Stamp Program violation. Claimant is to be disqualified from the Food Stamp Program for a period of 12 months for misrepresenting receipt of Food Stamp benefits for July 2003. The disqualification period shall begin as required according to 7 CFR 273.16.

NOTICE: If a party disagrees with this decision, a request for board review may be made by filing notice of appeal to the Board of Public Assistance, P.O. Box 202953, Helena, Montana 59620. The notice of appeal must be received within fifteen (15) days of the mailing of this decision.

DATED this ____ day of December, 2003.

Harlan Rudolf
Hearing Officer

CERTIFICATION OF MAILING

I certify that I have mailed a true and correct copy of the above ADMINISTRATIVE DISQUALIFICATION DECISION by depositing same in the U.S. Mail postage prepaid on this _____ day of December, 2003 at Helena, Montana, as follows:

Claimant
Address
City, ST Zip

Bonnie Brown
Office of Fair Hearings

c: Marilyn Becker, Lake Co OPA
Erna Brown, Program Integrity Investigator

Program Integrity

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