

BEFORE THE BOARD OF PUBLIC ASSISTANCE
OF THE STATE OF MONTANA

In the matter of the Food Stamp)	ADMINISTRATIVE
Administrative Disqualification Hearing)	DISQUALIFICATION
of Claimant)	HEARING NO. 07-1032

After proper notice an Administrative Disqualification Hearing was held on July 24, 2007 which was initiated by Flathead County Office of Public Assistance to disqualify Claimant from receiving Food Stamp benefits due to an alleged intentional program violation. The Administrative Disqualification Hearing was conducted by telephone between Flathead County Office of Public Assistance, Kalispell, Montana, the Office of the Program Integrity Investigator, Missoula, Montana, and the Office of Fair Hearings, Department of Public Health and Human Services, Helena, Montana. From the record the Hearing Officer now makes the following disposition of the case.

REPRESENTATION

Carey Taylor, Program Integrity Investigator, Department of Public Health and Human Services, Quality Assurance Division, Program Compliance Bureau, Program Investigation Unit, represented Flathead County Office of Public Assistance (hereinafter Flathead County). Claimant did not appear. Return receipt certified notice was sent to Claimant on June 21 2007 advising her of the time, date and place of the Administrative Disqualification Hearing. The Postal Service returned the notice marked refused. 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

Flathead County alleges that Claimant failed to provide accurate income information on the Application for Assistance when she applied for Expedited Food Stamp benefits. Flathead County believes this misrepresentation and concealment of facts to be an intentional program violation and thus has petitioned to disqualify Claimant from receiving Food Stamp benefits for 12 months.

EVIDENTIARY RULING

There were no objections to the evidence presented. Department Exhibits #1 through #10 were admitted into the record.

FINDINGS OF FACT

1. On September 13, 2006, Claimant signed an application for expedited Food Stamp benefits acknowledging the penalties for knowingly making false statements, misrepresenting facts or concealing information in order to obtain benefits. On this application, Claimant indicated she had no income and had not been employed in the past 30 days. Claimant was approved for food Stamp benefits on that same day. On page one of the application, Claimant indicated that her income for September 2006 was \$0 and stated on page 6 that no one in the household had worked in the last 30 days nor had any one stopped working or reduced hours in the last 30 days. Claimant certified under penalty of perjury that her answers were true

and correct. Her case was closed due to the Able Bodied Adults without Dependents time limit. She reapplied again on January 16, 2007. During the interview on January 19, 2007, Claimant stated that she had worked a couple of months at VL. Verification of that employment was requested from VL and reflected that Claimant was employed from May 5, 2006 through September 11, 2006 and did not report this employment on her September 13, 2006 application. During September 2006, Claimant received one check for \$613.45 before September 13, 2006 and one check for \$648.55 on September 15, 2006, but indicated that she had not worked or earned any income in the last 30 days. It is found that Claimant was aware of the reporting requirements as she had been adequately informed by Flathead County of the reporting requirements at the time of application.

2. The September 13, 2006 application was signed by Claimant acknowledging the answers were correct and complete. Although the application requests that the applicant list all household members' jobs and wages within the last 30 days, Claimant did not report any of the income she received in September 2006. She signed this application providing that the answers are true and correct.

3. On April 11, 2007, April 18, 2007 and May 15, 2007, the Program Investigation Unit sent Claimant letters explaining a referral had been received because she was suspected of committing an intentional program violation within the Food Stamp Program. Opportunity was given for her to discuss the issue with the Program Integrity Investigator. Claimant made no contact with the Investigator.

4. Claimant has not been previously disqualified from the Food Stamp Program due to an intentional program violation.

CONCLUSIONS OF LAW

1. Pursuant to ARM 37.78.1001, the Food Stamp Program shall be governed by the regulations of the Food and Consumer Service of the United States Department of Agriculture contained in the following parts, except as the rules in Chapter 78 of Title 37 of the Administrative Rules of Montana make specific provisions which are contrary to the federal Food Stamp regulations, in which case these rules shall take precedence over the federal regulations: 7 CFR, Parts 271 through 275.

2. Federal statutory authority for treatment of Food Stamp intentional program violations can be found at 7 U.S.C.2015(b).

3. When there is sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional program violation, then it is the responsibility of the Department of Public Health and Human Services to schedule an administrative disqualification hearing or refer the case to a court of appropriate jurisdiction. 7 CFR 273.16(a).

4. 7 CFR 273.16(c) provides that an intentional program violation shall consist of having intentionally made a false or misleading statement or misrepresented, concealed or withheld facts or committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp Coupons.

5. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member committed and intended to commit an intentional program violation. 7 CFR 273.16(e)(6).

6. Eligibility determinations for Food Stamp benefits are based in part on household income. 7 CFR 273.9 and ARM 37.78.1001. It is the responsibility of applicants and recipients to disclose correct and complete information on applications. 7 CFR 273.2. Households are required to report changes in income that exceed 130% of GMI no later than the 10th day of the month following the month that the change occurred. 7 CFR 173.12(a)(vii) and Department of Public Health and Human Services Manual FS 1501-3. The documents show Claimant was aware of and understood her reporting responsibilities and program requirements. Claimant committed and intended to commit an intentional program violation in defiance of the above Food Stamp statutes, regulations and rules by purposely withholding receipt of employment and earned income information. Based upon the answers on the application and interview, it is concluded this was not an oversight on the household's part. She had opportunity to report her employment and income and chose not to do so. Clear and convincing evidence has been presented by Flathead County that Claimant committed an intentional program violation by concealing, withholding and misrepresenting facts pertaining to all household income. This constitutes a misrepresentation, concealment and withholding of facts by Claimant in violation of the Federal and State regulations.

7. 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 twelve months for the first intentional violation, 24 months for the second violation, permanently for the third violation and ten years for misrepresenting residency or identity to obtain multiple benefits. 7 CFR 273.16(b). Claimant committed an intentional program violation. Claimant shall be disqualified from the Food Stamp Program for a period of twelve months as this is a first violation.

ORDER

As set forth in the Findings of Fact and Conclusions of Law, Flathead County Office of Public Assistance has properly determined that Claimant has committed an intentional program violation. Claimant shall be disqualified from the Food Stamp Program for a twelve month period, with such period beginning according to the applicable Federal and State regulations.

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 days of the mailing of this decision.

DATED: August 27, 2007.

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 August, 2007 at Helena, Montana as follows:

Claimant
Address
City ST Zip

Bonnie Brown
Administrative Assistant

c: John Gardner, Flathead Co OPA
Carey Taylor
Rolene Benson
Jill Sark