

**BEFORE THE OFFICE OF FAIR HEARINGS
MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

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| In the Matter of the Temporary Assistance for |) | Case Nos. 12-0090 & 12-0091 |
| Needy Families Cash Assistance (TANF) and |) | |
| Supplemental Nutrition Assistance Program (SNAP) |) | ADMINISTRATIVE |
| Administrative Disqualification Hearing (ADH) of |) | DISQUALIFICATION |
| Claimant |) | DECISION |

After proper notice, a telephonic ADH was held on August 25, 2011, which procedure was brought by the Program Compliance Bureau, Montana Department of Public Health and Human Services (Department), to disqualify Claimant from receiving TANF and SNAP benefits due to an intentional Program violation (IPV). From the record presented, the Hearing Officer now makes the following disposition of the case.

REPRESENTATION

Carey Taylor, Program Integrity Investigator, represented the Department. Notice of the hearing was sent by first class mail to Claimant who did not appear for the ADH. Despite failure to appear, the ADH proceeded as scheduled since the State agency discharged its responsibility under 7 CFR 273.16(e)(3) by sending notice through first class mail and pursuant to 7 CFR 273.16(e)(4) and ARM 37.78.505 the ADH shall be conducted without the household member(s) present.

IDENTIFYING INFORMATION

The Department alleges that Claimant intentionally failed to correctly report household composition in violation of the TANF and SNAP. The Department determined that this misrepresentation and concealment of facts constituted an IPV and petitioned to disqualify Claimant from receiving TANF and SNAP benefits for 12 months as a first violation.

EVIDENTIARY RULINGS

There were no objections to the evidence presented. Department Exhibits 1 through 12 were admitted into the record.

FINDINGS OF FACT

¶1 On March 2, 2011, Claimant submitted an Application for SNAP benefits claiming her three children as household members. By signing the Application, Claimant certified under penalty of perjury that all answers are correct and complete and acknowledged the reporting requirements and penalties for knowingly making false statements, misrepresenting facts or concealing information to obtain benefits.

¶2 On April 12, 2011, Claimant submitted an Application for TANF and SNAP benefits still claiming her three children as household members. By signing the Application, Claimant certified under penalty of perjury that all answers are correct and complete and acknowledged the reporting requirements and penalties for knowingly making false statements, misrepresenting facts or concealing information to obtain benefits.

¶3 The Department later obtained verification that Claimant did not have custody of her three children from February 8 through May 10, 2011.

¶4 Claimant has not been previously disqualified from the TANF or SNAP, this being a first offense.

CONCLUSIONS OF LAW

TANF:

¶1 Federal statute 42 USC 601 et seq. establishes a block grant so that states can provide TANF benefits.

¶2 Montana statutory law § 53-4-211, MCA, authorizes the Department to administer the TANF Program in compliance with all federal laws and requirements. Section 53-4-212(2), MCA, directs the Department to adopt administrative rules that are necessary and desirable for the administration of the TANF Program. In keeping with this statutory mandate, the Department has promulgated ARM 37.78.101 et seq.

¶3 Federal statute 42 USC 616 provides authority for state agencies to operate a fraud control program. If an individual is found to have committed an IPV by federal or state court or pursuant to an administrative hearing then the needs of such individual shall not be taken into account in determining eligibility for TANF for a certain period of time.

¶4 The Administrative Rules of Montana, ARM 37.78.402(2), state that all available income of any member of the filing unit is counted in determining eligibility and benefit amount for TANF cash assistance,

unless a specific provision elsewhere in the rules provides that the income will be excluded, disregarded or otherwise not counted.

¶5 ARM 37.78.505(1) defines an IPV as a willful action by an individual consisting of a false or misleading statement or misrepresentation, concealment or withholding of facts or any other action intended to mislead, misrepresent, conceal or withhold facts. If a TANF participant appears to have committed an IPV, then the local Office of Public Assistance must initiate ADH procedures to determine if the person should be disqualified from receiving cash assistance. *Id.* at (2).

¶6 ARM 37.78.505(5) requires the Hearing Officer to carefully consider the evidence and determine whether clear and convincing evidence exists that an IPV was committed. “Clear and convincing evidence” is an intermediate standard of proof which is more than “a preponderance of the evidence” and less than “beyond a reasonable doubt.” *Wareing v. Schreckendgust*, 280 Mont. 196, at 206, 930 P.2d 37, at 43 (1996).

¶7 ARM 37.78.505(10) states that if it is determined through an ADH that an individual receiving TANF has committed an IPV then the period of disqualification shall be 12 months for the first violation, 24 months for the second violation, permanently for the third violation, and 10 years for misrepresenting residency.

¶8 It should be concluded that the Department presented clear and convincing evidence in this case that Claimant was aware of and understood the responsibilities and TANF requirements but committed, and intended to commit, an IPV by failing to correctly report household composition. As such, it should be held that Claimant committed an IPV and should be disqualified from TANF for a period of 12 months as a first violation.

SNAP:

¶1 Montana statutory law § 53-2-901(1), MCA, authorizes the Department to administer the SNAP (formerly the Food Stamp Program) in compliance with all federal laws and requirements. Section 53-2-901(2), MCA, directs the Department to adopt administrative rules necessary and desirable for the administration of the SNAP. In keeping with this statutory mandate, the Department has promulgated ARM 37.78.1001, stating in part that the SNAP shall be governed by the regulations of the Food and Nutrition Service of the U.S. Department of Agriculture as contained in federal regulation 7 CFR, Parts 271 through 275,

pertaining to the purpose, definitions, administration, eligibility, certification and issuance of benefits. The Department has also promulgated Food Stamp policy FS 1505-1 pertaining to the definition and processing of IPV's.

¶2 Federal regulation 7 CFR § 271.1(a) states that the SNAP is designed to promote the general welfare and to safeguard the health and well being of the Nation's population by raising the levels of nutrition among low-income households. Federal regulation 7 CFR § 273.9(a) states that participation in the SNAP shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.

¶3 Federal statute 7 USC 2015(b) provides authority for the pursuit by state agencies of IPV's.

¶4 Federal regulation 7 CFR § 273.2(a)(2) requires state agencies to warn applicants in prominent and boldface lettering and understandable terms that the information provided by the applicant will be subject to verification by federal, state and local officials to determine if such information is factual and that if any information is incorrect then benefits may be denied and the applicant may be subject to civil and criminal prosecution for knowingly providing incorrect information under penalty of perjury.

¶5 Federal regulation 7 CFR § 273.2(f)(5) places the primary responsibility on the household for providing documentary evidence to support statements on the application and to resolve any questionable information. The state agency must assist the household in obtaining this verification, provided the household is cooperating with the agency.

¶6 Federal regulation 7 CFR § 273.12(a)(1)(vii) provides that state agencies may opt to require households with earned income that are assigned 6-month or longer certification periods to report only changes in the amount of gross monthly income that result in their gross monthly income exceeding 130 percent of the monthly poverty income guideline for their household size. The Department has promulgated FS 1501-3, stating that the household is required to report by the 10th of the following month when its actual income exceeds the gross monthly income for the household size.

¶7 Federal regulation 7 CFR 273.16(a) requires that when there is sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of an IPV then it is the responsibility of the state agency to schedule an ADH or refer the case to a court of appropriate jurisdiction.

¶8 Federal regulation 7 CFR 273.16(b) provides that individuals found to have committed an IPV either through an ADH or by a court of appropriate jurisdiction, or who have signed either a waiver of right to a hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the SNAP for 12 months for the first violation, 24 months for the second violation, permanently for the third violation and 10 years for misrepresenting residency or identity to obtain multiple benefits. See also FS 1505-1.

¶9 Federal regulation 7 CFR 273.16(c) defines an IPV to 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, SNAP 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). See also FS 1505-1.

¶10 Federal regulation 7 CFR 273.16(e)(6) requires the hearing authority to base the determination of IPV on clear and convincing evidence demonstrating that the household member(s) committed, and intended to commit, an IPV as defined in 7 CFR 273.16(c) above. “Clear and convincing evidence” is an intermediate standard of proof which is more than “a preponderance of the evidence” and less than “beyond a reasonable doubt.” *Wareing v. Schreckendgust*, 280 Mont. 196, at 206, 930 P.2d 37, at 43 (1996).

¶11 It should be concluded that the Department presented clear and convincing evidence that Claimant was aware of and understood the responsibilities and SNAP requirements but intentionally failed to correctly report household composition. As a result, it should be held that Claimant committed an IPV and should be disqualified from the SNAP for a period of 12 months as a first violation.

ORDER

As set forth in the above Findings of Fact and Conclusions of Law, the Department has properly determined that Claimant committed an IPV. Therefore, Claimant is hereby disqualified from TANF and SNAP for 12 months with such period to be imposed according to applicable rules and regulations.

NOTICE: If a party disagrees with this Decision, then a request for 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 date of this decision shown below.

DATED this 30th day of August 2011

Joseph P. Sternhagen, Hearing Officer

CERTIFICATE OF SERVICE

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 the _____ day of August 2011, at Helena, Montana, as follows:

CLAIMANT

e-copy: Monica West, Program Compliance Bureau

Crystal Young, Administrative Assistant