

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

In the Matter of the TANF Cash)
Assistance and Supplemental)
Nutrition Assistance Program)
Administrative Disqualification Hearing)
of [Recipient])
_____)

Case No. 09-0856

**ADMINISTRATIVE
DISQUALIFICATION
DECISION**

Hill County Office of Public Assistance (hereinafter Hill OPA) initiated proceedings to disqualify [Recipient] from receiving Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance to Needy Families (TANF) Cash Assistance benefits due to an alleged intentional program violation. After proper notice, the undersigned Hearings Officer held an Administrative Disqualification Hearing on June 4, 2009. The hearing was conducted by telephone conference call between the Hill OPA office, Havre, Montana, and the Office of Fair Hearings, Department of Public Health and Human Services (Department), Helena, Montana. From the record the Hearings Officer now makes the following disposition of the case.

REPRESENTATION

Karen Mays, Program Compliance Investigator, Fraud and Recovery Unit, represented Hill OPA. [Recipient] represented herself.

IDENTIFYING INFORMATION

Hill OPA alleges that [Recipient] knowingly and willfully concealed receipt of child support income from that office in order to receive SNAP and TANF

benefits to which she had no entitlement. Hill OPA believes this act to be an intentional program violation and thus has petitioned to disqualify [Recipient] from receiving SNAP benefits for a period of 12 months and TANF benefits for a period of 12 months.

EVIDENTIARY RULING

Hill OPA's exhibits 1 through 15 were admitted into the record without objection.

FINDINGS OF FACT

1. [Recipient] has received SNAP benefits on a monthly basis since at least December of 2005. She received TANF benefits in June, July and August of 2008.

2. On June 26, 2008, [Recipient] completed and signed an Application for Assistance for TANF benefits. Her household consisted of herself and her two children. On Question 21 (Page 5) the form asks that all unearned income be identified by checking the box in front of the appropriate item. There is a line that says "Child Support/Alimony" and the box was not checked. A checkmark was entered only in the box adjacent to "None." Question 24 (Page 6) asks if anyone expects to receive any money, such as child support. The "Yes" box is checked and "child support" is underlined. No explanation was entered in the space provided below that question. Question 58 (Page 12) asks if any changes are expected within the next three months and the "Yes" box is marked and [Recipient] wrote "might get child support?" on the line provided for explanation.

3. When an individual signs an Application for Assistance, they swear or affirm that the statements made on the form are true and correct. The application warns that it is unlawful to knowingly make false statements, misrepresent facts or conceal information to obtain benefits. It informs individuals that any household member who knowingly and intentionally breaks a SNAP or TANF rule can be barred from the program for one year for the first violation, two years for the second violation, and permanently after the third violation.

4. On June 26, 2008, [Recipient] completed and signed a Child Support Enforcement Referral form in which she identifies the father of her two children as [Children's Father]. On the front page of the form, it states, in pertinent part, *"The law requires you to cooperate with the county Office of Public Assistance (OPA) and the Child Support Enforcement Division (CSED) as a condition of receiving public assistance. . . . As a participant of TANF cash assistance, if you receive support payments from any source except the CSED, you must immediately turn them over to your Office of Public Assistance or send them to the CSED . . . By signing an application for public assistance, you have automatically assigned and transferred all rights to child, spousal and medical support to the State of Montana, Department of Public Health and Human Services. This automatic assignment is made pursuant to Montana Code Annotated (MCA) §53-2-613 and under the terms and conditions of 42 USC § 608, Title IV-A of the Social Security Act, as amended. The assignment is effective for current support, delinquent support accrued prior to the assignment, and for medical obligations. The assignment takes effect upon a determination that your household is eligible for assistance and remains in effect with respect to any unpaid support and medical obligations which accrued at any time prior to the termination of benefits. . . ."* On the last page of the form, immediately above the signature line, it states, *"I ALSO understand, if I receive any child support payments paid directly to me from the non-custodial parent, while I am receiving TANF cash assistance, I must turn these payments over to Child Support Enforcement Division, Department of Public Health and Human Services for processing."*

5. The OPA case worker and [Recipient] met on June 30, 2008, for the TANF intake interview. According to case notes entered by the worker, [Recipient] denied receiving child support payments and stated she did not know when that might occur.

6. On June 28, 2008, [Recipient] signed a Rights and Responsibilities form. By signing she acknowledged she had read the entire form and understood its meaning. On Page 1, the form states that the applicant is

responsible to report changes timely as required for TANF and other programs directly to the OPA or to the WoRC Case Manager and must cooperate with child support enforcement if she receives TANF. On Page 2 it states that changes in circumstances such as changes in unearned income, including child support, must be reported within 10 days of knowing about the change.

7. On July 28, 2008, [Recipient] completed and signed a Redetermination/Recertification Report form for her ongoing SNAP benefits. Question 15 (Page 4) asks if anyone in the household received any unearned income, such as child support, from any source. She marked "No." By signing this form, [Recipient] acknowledged that she was aware of the possible penalties for withholding information and certified under penalty of perjury that her answers were correct and complete to the best of her knowledge.

8. On August 5, 2008, the OPA case worker conducted a face-to-face interview with [Recipient]. According to the worker's case notes, [Recipient] denied that she was receiving child support but did acknowledge that paternity had been established. [Recipient] also signed a Rights and Responsibilities form that same day, indicating she understood her requirements for reporting changes in household circumstances and the requirement to report receipt of child support.

9. On February 7, 2008, [Recipient] submitted a Change Report Form to report that she had a change in address and shelter costs, and also that [Children's Father] had moved out of the household. This demonstrates that she understood that household changes must be reported. On March 13, 2008, and September 17, 2008, [Recipient] filed additional change report forms to report changes in employment and earned income. She did not report any change in unearned income, such as child support, on either of these forms.

10. On November 5, 2008, Hill OPA received an e-mail from Child Support Enforcement Division stating that office had received a signed and notarized Affidavit of Support Received or Paid which indicated [Children's Father] had directly paid [Recipient] child support of \$144 per month from March

2008 through September 2008 and \$72 in October 2008. The affidavit had been signed by [Recipient] on November 3, 2008.

11. On November 14, 2008, Hill OPA authorized issuance of notices to [Recipient] advising her that she had incurred overpayments of \$107 in SNAP benefits and \$312 in TANF benefits due to failure to report receipt of child support payments.

12. On November 21, 2008, Hill OPA referred this case to Quality Assurance Division for investigation as an intentional program violation.

13. [Recipient] has not been previously disqualified from SNAP or TANF due to an intentional program violation.

14. [Recipient] intentionally failed to report child support income in order to receive TANF benefits to which she was not entitled.

CONCLUSIONS OF LAW

TANF Cash Assistance

1. Federal statutory authority to operate a fraud control program is provided by 42 U.S.C. 616. If an individual is found to have committed an intentional program violation by federal or state court or pursuant to an administrative hearing, the needs of such individual shall not be taken into account in determining eligibility for TANF Cash Assistance for a certain period of time.

2. TANF procedures and requirements for all Montana Counties when an individual appears to have committed an intentional program violation can be found at ARM 37.78.505.

3. An intentional program violation is 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. ARM 37.78.505(1).

4. The Hearing Officer must carefully consider the evidence and determine whether clear and convincing evidence exists that an intentional program violation was committed. ARM 37.78.505(5).

SNAP

5. Pursuant to ARM 37.78.1001, SNAP shall be governed by the regulations of the Food and Consumer Service of the U.S. Department of Agriculture as contained in 7 CFR, Parts 271 through 275 (as adopted by the Department and incorporated by reference).

6. Federal statutory authority for treatment of SNAP intentional program violations by the States can be found at 7 U.S.C. 2015(b). The Department promulgated SNAP policy FS 1505-1 pertaining to the definition and processing of intentional program violations.

7. Federal regulation 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. 7 CFR 273.2(a)(2).

8. 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 SNAP Act, the SNAP regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits. 7 CFR 273.16(c).

9. 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 to schedule an administrative disqualification hearing or refer the case to a court of appropriate jurisdiction. 7 CFR 273.16(a).

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

11. Eligibility determinations for TANF Cash Assistance and SNAP benefits are based in part on household income. For TANF Cash Assistance see ARM 37.78.402. For SNAP see 7 CFR 273.9 and ARM 37.78.1001.

12. [Recipient] testified that the money she received from [Children's Father] was only money he had entrusted to her to pay his bills because he liked how well she handled her finances. This claim is not credible and directly contradicts the evidence. [Recipient] signed an Affidavit of Support, clearly indicating that she considered the payments to represent child support, and the payments, with the exception of October, were all of equal amount. Also, \$144 per month could not have been a difficult amount for anyone to handle on their own. The documented evidence further shows that [Recipient] was aware of and understood her responsibilities and program requirements. The Department presented clear and convincing evidence that [Recipient] committed an intentional program violation constituting a concealment and withholding of facts in violation of the Federal and State regulations. She committed and intended to commit an intentional program violation in defiance of the above TANF Cash Assistance and SNAP statutes, regulations and rules by purposely withholding information regarding her receipt of child support income.

13. If it is determined through an administrative disqualification hearing that an individual on TANF Cash Assistance has committed an intentional program violation, the period of disqualification shall be twelve months for the first violation, 24 months for the second violation and permanently for the third violation. ARM 37.78.505(10). 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 SNAP for 12 months for the first 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). [Recipient] committed her first intentional program violation and shall be disqualified from the TANF Cash Assistance and SNAP for a period of 12 months.

ORDER

Based on the above Findings of Fact and Conclusions of Law, Hill County Office of Public Assistance has properly determined that [Recipient] committed an intentional program violation and is to be disqualified from the SNAP program for 12 months and from the TANF Cash Assistance program for 12 months, with such periods beginning according to 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 (15) days of the mailing of this decision.

DATED this 26th day of June, 2009.

James L Keil
Hearings Officer

CERTIFICATE 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 the 26th day of June, 2009, at Helena, Montana, as follows:

RECIPIENT
ADDRESS
CITY STATE ZIP

Office of Fair Hearings

e-copy: Monica West, Program Compliance Bureau