

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

In the Matter of the Supplemental	)	Case No. 11-0265
Nutrition Assistance Program (SNAP)	)	
Administrative Disqualification Hearing (ADH) of	)	<b>ADMINISTRATIVE</b>
Claimant	)	<b>DISQUALIFICATION</b>
	)	<b>DECISION</b>

**INTRODUCTION**

The Montana Department of Public Health and Human Services, Program Compliance Bureau (Department), initiated proceedings to disqualify Claimant from receiving SNAP benefits for 24 months due to an alleged intentional Program violation (IPV). The undersigned Hearing Officer held an ADH on October 19, 2010. From the record presented, the Hearing Officer now makes the following disposition of the ADH.

**REPRESENTATION**

Nancy Schlicht, Program Integrity Investigator, represented the Department. Notice of the ADH was sent by first class mail to Claimant, who did not appear for the hearing. The hearing was held nevertheless as the State discharged its responsibility under 7 CFR 273.16(e)(3) by sending notice through first class mail and household members need not appear at the hearing pursuant to 7 CFR 273.16(e)(4).

**IDENTIFYING INFORMATION**

The Department alleges that Claimant intended to commit fraud by failing to report household income as required by the SNAP in order to receive more benefits than entitled. As this is a second offense, the Department has petitioned to disqualify Claimant from receiving SNAP benefits for a period of 24 months.

## **EVIDENTIARY RULINGS**

There are no evidentiary rulings pending. Department Exhibits 1 through 25 are admitted into the record without objection.

## **FINDINGS OF FACT**

¶1 On December 3, 2007, Claimant submitted an Application for SNAP benefits claiming no household employment income. By signing, Claimant certified under penalty of perjury that all answers were correct and complete and acknowledged the reporting requirements and penalties for knowingly making false statements, misrepresenting facts or concealing information to obtain benefits.

¶2 Also on December 3, 2007, Claimant signed the Rights and Responsibilities Form which details the reporting requirements for the SNAP. By signing, Claimant affirmed that she read this Form and understood what it means.

¶3 On May 9, 2008, Claimant submitted a Six-Month Report claiming no household employment income. By signing, Claimant acknowledged the penalties for hiding or giving false information.

¶4 On November 13, 2008, Claimant signed a Redetermination/Recertification Report Form claiming no household employment income. By signing, Claimant certified under penalty of perjury that all answers were correct and complete and acknowledged the penalties for knowingly making false statements, misrepresenting facts or concealing information to obtain benefits.

¶5 On November 18, 2008, Claimant signed the Rights and Responsibilities Form which details the reporting requirements for the SNAP. By signing, Claimant affirmed that she read this Form and understood what it means.

¶6 On December 8, 2008, notice was sent approving on-going benefits and reminding Claimant to report changes according to the reporting requirements, including to report if total gross monthly income exceeds \$ 1,517 for the household size of two no later than the 10<sup>th</sup> day of the month after the change occurs.

¶7 On May 12, 2009, Claimant submitted a Six-Month Report claiming no household employment income. By signing, Claimant acknowledged the penalties for hiding or giving false information.

¶8 However, verification was later obtained by the Department showing that Claimant's brother, a household member, was employed from January through June 2008 and from October 2008 through March 2009 which income Claimant failed to report as required by the SNAP.

¶9 Claimant has been previously disqualified once from the SNAP, this being a second offense.

### **CONCLUSIONS OF LAW**

¶1 Montana statutory law § 53-2-901(1), MCA, authorizes the Department to administer the Food Stamp Program (renamed the Supplemental Nutrition Assistance Program (SNAP)) in compliance with all federal laws and requirements. Section 53-2-901(2), MCA, directs the Department to adopt administrative rules that are 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 Food Stamp Program shall be governed by the regulations of the Food and Consumer 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 IPVs.

¶2 Federal regulation 7 CFR § 271.1(a) states that the Program 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 Program 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 statutory law 7 U.S.C. 2015(b) provides authority for the pursuit of IPVs by state agencies.

¶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 Six-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 policy FS 1501-1, stating that the County OPA determines a household to be either a Six-Month Reporting or a Change Reporting

Household depending on the household's circumstances. A Six-Month Reporting household is required to report by the 10<sup>th</sup> of the following month if its actual income exceeds the gross monthly income for the household size and to complete reports every six months. Change Reporting Households are required to report changes as soon as possible but within 10 days of knowledge of the change.

¶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 Program 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 Act, 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). See also FS 1505-1.

¶10 Federal regulation 7 CFR 273.16(e)(6) requires the hearing authority to base the determination of an IPV on clear and convincing evidence demonstrating that the household

