BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS

**STATE OF GEORGIA**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| DHS, OFFICE OF THE INSPECTOR GENERAL, Petitioner,v.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  Respondent. |  | :::::::: |  | Docket No.: OSAH-OIS-FSF-1319841-146-LangstonAgency Reference No.: 008048969 |

**FINAL DECISION**

**I. Introduction**

Petitioner requested a hearing against Respondent to purse an administrative disqualification for Intentional Program Violation from the food stamps program, as well as to collect on an overpayment of benefits stemming from the alleged violation. A hearing was held in this case on May 8, 2013. Both parties were present and represented by counsel. For the reasons stated herein, the Petitioner's request to administratively disqualify Respondent from Food Stamp Program participation is **DENIED** and its decision to recoup the over payment is **AFFIRMED**.

**II. Findings of Fact**

Respondent has received food stamp benefits since at least 2007. Respondent completed subsequent reviews to continue receiving food stamp benefits. The reviews in question which led to the instant hearing took place on September 5, 2011 and March 9, 2012. Respondent was initially investigated for Intentional Program Violation (IPV) by the Office of Inspector General (OIG) for having her husband living in the home with her and not reporting his income. After further investigation it was determined that the husband was not living in the home. The reason for the IPV investigation changed to Respondent failing to report her business and joint checking account with her husband.

Respondent reported to the Department of Family and Children Services a joint checking and savings account with her husband in 2007.

Respondent attempted to complete the September 2011 and March 2012 reviews online using COMPASS. She was unable to complete the applications online. She contacted the Department of Family and Children Services (DFCS) when she could not complete the reviews and she was assisted in completing the reviews by a caseworker. The caseworker entered the information into COMPASS for Respondent to complete the reviews. At the September 5th review Respondent reported that her husband moved out of the home and her brother-in-law, sister-in-law, and their children moved in the home. At the March 9th review Respondent reported that she had income from Happy Faces and H&R Block. She also reported a joint checking account with another household member.

During both reviews Respondent was asked by the caseworker if there were any changes to report. This question prompted Respondent to report the above information. Respondent did not report any information about her joint checking account with her husband because she had already reported it to DFCS in the past and there was no change in the account. Even though Respondent and her husband have separated they still maintain the joint checking account. Respondent’s husband has limited reading and writing skills, he finished high school with a special education certificate, and he does not know how to handle his finances. Respondent has continued to manage the finances for herself and her husband since the separation. Respondent pays his bills for him from the joint account and also gets him Wal-Mart gift cards so he can buy gas. She is able to differentiate between the funds in the account that are her husband’s and the funds that are her own. She does not use money that comes from her husband’s paycheck for herself or the children.

Respondent did not report any income from her business called \_\_\_\_\_\_\_\_\_\_\_\_ because she did not have any profit from the business. However, she failed to report a tax refund she received as income. Respondent used tax return money to buy pieces of equipment to add to her inflatable collection. Any money Respondent received from renting out her equipment was put right back into the business to pay off loans, pay expenses, or purchase new equipment. Respondent did not deliberately withhold information about her business from DFCS; she voluntarily sat with some DFCS caseworkers at a Chamber of Commerce meeting and openly shared about her business with them and gave them her business cards.

2.

During the times of the said Food Stamp applications, respondent was in fact a joint account holder along with her husband on account number \_\_\_\_\_\_\_\_\_\_\_ at Regions Bank. Respondent did in fact have access to funds in the account, as evidenced by check number 1110 from said account, written in February of 2012 to \_\_\_\_\_\_\_\_\_\_\_ as partial payment for the purchase of a business known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ which benefited the Respondent. Respondent admitted to being a joint owner of the said account and to writing the said check.

3.

Respondent failed to report revenue or tax return proceeds from the business known as \_\_\_\_\_\_\_\_\_\_\_\_.

4.

As a result of the Respondent’s failure to disclose information, Respondent was overpaid a total of $9,434.00 from the Food Stamp Program.

# III. Conclusions of Law

1. The issues presented for consideration in this hearing are whether Respondent received an over-issuance and whether she intentionally violated Food Stamp rules.

2. In order to sustain the allegation, the evidence must rise beyond a preponderance to the clear and convincing standard. See Addington v. Texas, 441 U.S. 418, 424 (1979) (noting the clear and convincing standard protects “particularly important individual interests in various civil cases.”). According to the Code of Federal Regulations, intentional program violations shall consist of having intentionally made a false or misleading statement, or misrepresenting, concealing or withholding facts. 7 C.F.R. sec. 273.16(c)(1).

3. Department Policy 3420, Financial Eligibility Criteria - Income, provides, “Income is included if it is accessible to the AU for daily use because the AU has the legal ability to use it. Respondent was an owner of said account and did in fact have access to it, as evidenced by check number 1110, referenced above.

4. In this case, the Petitioner has failed to present clear and convincing evidence that Respondent intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts. Respondent failed to properly disclose accounts to which she had access to funds, and any business revenue. However, the evidence does not support the allegation that there was an intentional program violation. The evidence does support that the facts of this case lead to a Food Stamp overpayment. The Head of Household is responsible for the repayment of any overissuance to Petitioner. 7 C.F.R. sec. 273.16(b).

5. The Respondent/Head of Household received an overissuance of Food Stamp Benefits. Each person who was an adult member of the household when the overpayment occurred is responsible for making restitution for the overpayment. *See* 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.18(a)(4)(i); *see also* O.C.G.A. § 49-4-15(c).

**IV. Decision**

**IT IS HEREBY ORDERED THAT** the Petitioner’s request to have Respondent administratively disqualified from Food Stamp Program participation is **DENIED.**

**IT IS FURTHER ORDERED THAT** Petitioner’s decision to recoup the over-issuance is **AFFIRMED.**

|  |  |
| --- | --- |
| **SO ORDERED THIS** 24th day of June, 2013 |  |

 DAVID C. LANGSTON

 Administrative Law Judge