



3.

On her original and all subsequent applications for Food Stamp benefits during the relevant time period, Respondent listed her home address as [REDACTED]. Respondent identified herself and her two children as the only members of the household who lived at this address. *Testimony of Jackie Wilson; Exhibit P-3.*

4.

Petitioner maintains that Mr. [REDACTED] also resided at [REDACTED] during the relevant time period, and thus his earnings should have been included as part of the household's total income. If Mr. [REDACTED]'s employment income had been included, the household would not have been eligible for most of the Food Stamp benefits that they received.<sup>2</sup> Petitioner seeks recoupment of an alleged overpayment of \$20,807.00.<sup>3</sup>

5.

When Petitioner confronted Respondent with these allegations, she denied that her husband lived in the home. She stated that because he was violent, he had left the home and stayed elsewhere. She was aware that he used the [REDACTED] address as a mailing address, but did not want to raise the issue because she feared he would take action to force her out of the home. *Testimony of Investigator Wilson; Exhibits P-18; P-19.*

6.

In support of its claim, Petitioner presented evidence that Mr. [REDACTED] had listed the [REDACTED] address as his permanent address on multiple occasions. From August 2008 to October 2008, Mr. [REDACTED] was employed by [REDACTED]. Following his brief employment with [REDACTED], Mr. [REDACTED] has worked for [REDACTED]. Both of Mr. [REDACTED] employers, [REDACTED], indicated that Mr. [REDACTED] had reported the [REDACTED] address as his permanent address. Mr. [REDACTED] never changed or updated this address. *Exhibits P-5; P-6.*

<sup>2</sup> Based on Mr. [REDACTED] income, Petitioner concluded that Respondent would have been eligible for partial benefits for two months during the relevant time period. This amount has been discounted by Petitioner from the total alleged overpayment.

<sup>3</sup> Mr. [REDACTED] testimony conflicts with a number of representations made by Respondent on her Food Stamp benefit applications and review forms. On her submissions to Petitioner, Respondent indicated that she made monthly rent or mortgage payments of \$799.07. In contrast, Mr. [REDACTED] testified that he and his wife agreed that he would make the mortgage payments for the [REDACTED] as child support. Respondent's applications and review forms indicate that she made a number of statements that were not supported by the evidence presented at the hearing. For example, she also claimed on at least one occasion that she and Mr. [REDACTED] had divorced and they are still married. Additionally, on her applications Respondent claimed that she received varying amounts of monthly child support. Contrary to the evidence presented at the hearing, the amount of child support alleged to have been received was substantially less than the monthly mortgage payment. Moreover, although her name is both on the property deed and on county tax records, Respondent disclaimed ownership of any homeplace property. The undersigned finds these discrepancies troubling; however, for the purposes of this hearing Petitioner only raised the issue of whether Mr. [REDACTED] was a member of the household from August 2008 through July of 2012 such that his income should have been included in determining household income [REDACTED]; *Exhibits P-3; P-16.*

7.

In November 2012, Mr. [REDACTED] received unemployment benefits. He listed his address as [REDACTED]. Respondent did not receive Food Stamp benefits in November 2012. *Exhibit P-7.*

8.

W-2 forms for the years 2008, 2009, 2010 and 2011 reflect Mr. [REDACTED] address as [REDACTED]. W-4 forms for 2008 and 2010 also list [REDACTED] as his address. *Exhibits P-8; P-9.*

9.

United States Postal records indicate that as of January 14, 2013, Mr. [REDACTED] last known address was [REDACTED]. *Exhibit P-10.*

10.

Mr. [REDACTED] driver's license, obtained on September 21, 2005, reflects Mr. [REDACTED] address as [REDACTED]. [REDACTED] voter's registration record, also obtained on September 21, 2005, lists his address as [REDACTED]. *Exhibits P-11; P-12.*

11.

Records from the Heard County Tax Assessors indicate that as of March 8, 2013, the property at [REDACTED] was owned by both [REDACTED]. *Exhibit P-13.*

12.

Vehicle Registration records indicate that as of December 19, 2012, Mr. [REDACTED] registered his vehicle to the address of [REDACTED]. *Exhibit P-14.*

13.

Mr. and Mrs. [REDACTED] do not share a joint bank account, nor was there evidence that they filed taxes as a joint household. On occasion, Mr. [REDACTED] attended family events, such as birthdays. He celebrated holiday occasions with friends or at a hotel. *Testimony of [REDACTED]*

14.

Mr. [REDACTED] works as an itinerant metalworker for [REDACTED]. His job sites are located around the southeast. When he is assigned to a job, [REDACTED] pays for his living expenses. Respondent presented documentation and records that Mr. [REDACTED] stayed in multiple locations during the relevant time period, including evidence that he lived in Savannah for over a year. In the last two years he has temporarily lived in six locations. He currently lives with his supervisor, [REDACTED], in Monticello, Georgia. He is working in nearby Athens, Georgia. *Testimony of [REDACTED]; Exhibits R-B; R-D.*

15.

Because he moves so frequently, Mr. [REDACTED] used the [REDACTED] address as a mailing address. When he receives mail at this address, Mr. [REDACTED] daughter contacts him to let him

know that mail has arrived. Mr. [REDACTED] then contacts [REDACTED], a friend of his, to pick up the mail. Mr. [REDACTED] testified at the hearing that he picks up Mr. [REDACTED] mail from the [REDACTED] address about once a month. Mr. [REDACTED] supported Mr. [REDACTED] testimony that he did not live at the [REDACTED] address. Mr. [REDACTED] has stayed with Mr. [REDACTED] approximately ten times since 2009. *Testimony of [REDACTED]; Testimony of [REDACTED]*

16.

[REDACTED] has known Respondent since 2005. Since 2008, [REDACTED] has visited the [REDACTED] address two or three times per week to perform odd jobs or household chores for Respondent. He has never seen Mr. [REDACTED] in the home, nor any indication that he resided at the home. Prior to the date of the hearing, he had not met Mr. [REDACTED]. *Testimony of [REDACTED]*

17.

[REDACTED] has known Respondent since 2005, and later worked as Respondent's supervisor at Dollar General. He scheduled her hours during the day so that she could be home with her children after school. Mr. [REDACTED] sees Respondent at least once a week, and speaks to her on the telephone daily. He has never known Mr. [REDACTED] to be in the home, nor seen any indication that Mr. [REDACTED] resided in the home. Prior to the date of the hearing, he had not met Mr. [REDACTED]. *Testimony of [REDACTED]*

18.

[REDACTED] met Respondent six or seven years ago. She has been to Respondent's home to visit and watch her children. She has never seen Mr. [REDACTED] in the home, or noticed anything that indicated he resided in the home. *Testimony of [REDACTED]*

### III. Conclusions of Law

1.

The burden of proof is upon Petitioner. OSAH Rule 616-1-2-.07(1)(d). The evidentiary standard is clear and convincing. OSAH Rule 616-1-2-.21(4); 7 C.F.R. § 273.16.

2.

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

3.

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. § 273.16(c)(1).

4.

Petitioner alleges that Respondent concealed the fact that Mr. [REDACTED] lived in her household during the time that she received Food Stamp benefits. While Petitioner maintains that a spouse must always be considered a member of the household, federal regulations define a household as “[a] group of individuals who live together and customarily purchase and prepare meals together for home consumption.” 7 C.F.R § 273.1(a).<sup>4</sup> Only spouses who live together must be presumed to be members of the same household. See 7 C.F.R § 273.1(b).

5.

The evidence does not clearly and convincingly demonstrate that Mr. [REDACTED] lived in the same household as Respondent during the relevant time period. While Petitioner presented a number of written documents that indicate that Mr. [REDACTED] did use the [REDACTED] property as his mailing address, Mr. [REDACTED] offered testimony explaining his use of this address. Mr. [REDACTED] is an itinerant metalworker who moves from jobsite to jobsite, as such he has no other permanent mailing address. He has lived in six different locations over the past two years.

6.

Mr. [REDACTED] also offered testimony and documentation that he has not been physically present for any significant length of time at the [REDACTED] address since 2005. This testimony was supported by multiple witnesses. [REDACTED] testified that Mr. [REDACTED] did not live at the [REDACTED] [REDACTED] and [REDACTED] all have visited Respondent’s home on multiple occasions and have never seen either Mr. [REDACTED] or any evidence that he resided in the home. Both [REDACTED] visited Respondent at least once a week. There was no evidence that Respondent and Mr. [REDACTED] had a joint banking account, or had filed taxes as a joint household.

7.

Accordingly, the evidence does not clearly and convincingly support the allegation that Ms. [REDACTED] failed to include [REDACTED] as a member of the household between August 2008 and July 2012.

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<sup>4</sup> Petitioner argues that, pursuant to 7 C.F.R § 273.1(b), Mr. [REDACTED] income must be considered as if he was a member of the household even if he worked out of town. However, the regulation applies only to spouses who are living together as defined by C.F.R § 273.1(a). As the undersigned concludes that Mr. [REDACTED] and Respondent were no longer living together in the same household, this argument is not applicable to the instant circumstances.

**IV. Decision**

**IT IS HEREBY ORDERED THAT** Petitioner's proposed action to recoup benefits from Respondent and to administratively disqualify Respondent from Food Stamp Program participation is **DENIED**.

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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**RONIT WALKER**  
**Administrative Law Judge**