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

In the matter of the Supplemental Nutrition Assistance Program Administrative Disqualification Hearing of Recipient	)))))	**Case No. 11-0180** **ADMINISTRATIVE DISQUALIFICATION DECISION**

After proper notice an Administrative Disqualification Hearing was held on September 28, 2010 which was initiated by the Department of Public Health and Human Services, Program Compliance Bureau to disqualify Recipient from receiving Supplemental Nutrition Assistance Program (SNAP) benefits due to an alleged intentional program violation. The Administrative Disqualification Hearing was conducted by phone at the Fergus County Office of Public Assistance, Lewistown, Montana, the Office of the Program Integrity Investigator, Missoula, Montana, and the Office of Fair Hearings, Department of Public Health and Human Services, Helena, Montana. From the record the Hearing Officer now makes the following disposition of the case.

REPRESENTATION

Amy Hill, Program Integrity Investigator, represented the Department of Public Health and Human Services, Program Compliance Bureau. Notice was sent to Recipient by first class mail on August 27, 2010 advising her of the time, date and place for the Administrative Disqualification Hearing. Recipient did not appear for the Administrative Disqualification Hearing. The hearing can be held as the State agency has discharged its responsibility under 7 CFR 273.16(e)(3) by sending notice by first class mail. The hearing may be conducted without the household member being present which is allowed at 7 CFR 273.16(e)(4).

IDENTIFYING INFORMATION

The Department of Public Health and Human Services, Program Compliance Bureau alleges that Recipient misrepresented her household composition when she submitted a Redetermination/Recertification Report on October 23, 2009 by including her daughter in her household when daughter was not residing with her at that time. The Program Compliance Bureau believes that this misrepresentation of facts is an intentional program violation and thus has petitioned to disqualify Recipient from receiving SNAP benefits for 24 months.

EVIDENTIARY RULING

There were no objections to the evidence presented. Department Exhibits #1 through #9 were admitted into the record.

FINDINGS OF FACT

1. Recipient has been in receipt of SNAP benefits off and on since November 2006. She signed and submitted a Redetermination/Recertification Report on October 23, 2009 with the understanding that she must accurately report information to Fergus County OPA and acknowledging that all the information she had provided was true and correct. This report warns the applicant that it is unlawful to knowingly make false statements, misrepresent facts or conceal information to obtain benefits. Penalties for knowingly and intentionally concealing information were explained. Recipient included her daughter as a household member when she signed and filed the Redetermination/Recertification Report for SNAP benefits.

2. On February 25, 2010, Missoula County OPA received a call from the Havre Middle School reporting that daughter was enrolled with them and living with her father. On February 26, 2010, Havre Middle School verified that daughter enrolled and was attending school in Havre since August 26, 2009. Missoula County OPA referred this case for investigation based upon this information.

3. On the Redetermination/Recertification Report filed by Recipient on October 23, 2009, she included daughter as a household member and reported that Sierra was homeschooled. Daughter was no longer in her home and had not been since August 26, 2009.

4. There is clear and convincing evidence that Recipient intentionally gave false information regarding her household composition on the Redetermination/ Recertification Report for SNAP benefits.

5. On June 2, 2010, the Program Integrity Investigator sent Recipient a letter explaining a referral had been received because she was suspected of committing an intentional program violation within SNAP. Opportunity was given for her to discuss the issue with the Program Integrity Investigator. Recipient has not contacted the investigator.

6. Recipient has been previously disqualified from SNAP due to an intentional program violation, therefore this would be a second intentional program violation.

CONCLUSIONS OF LAW

1. Pursuant to ARM 37.78.1001, SNAP shall be governed by the regulations of the Food and Consumer Service of the United States Department of Agriculture, now known as the Food and Nutrition Service (FNS) as contained in the following parts, except as the rules in Chapter 78 of Title 37 of the Administrative Rules of Montana make specific provisions which are contrary to the federal SNAP regulations, in which case these rules shall take precedence over the federal regulations: 7 CFR, Parts 271 through 275. The Department has adopted and incorporated by reference 7 CFR 271 through 275.

2. Federal statutory authority for treatment of SNAP intentional program violations can be found at 7 U.S.C. 2015(b).

3. 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 of Public Health and Human Services to schedule an administrative disqualification hearing or refer the case to a court of appropriate jurisdiction. 7 CFR 273.16(a).

4. Federal Regulation 7 CFR 273.16(c) provides that 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 Food Stamp

Act, SNAP regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.

5. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member committed and intended to commit an intentional program violation. 7 CFR 273.16(e)(6). "Clear and convincing evidence" is more than "a preponderance of the evidence" but less than "beyond a reasonable doubt."

6. Eligibility determinations for SNAP benefits are based in part on household composition. 7 CFR 273.1. Households must provide correct and complete information on their applications. 7 CFR 273.2. The documents presented by the investigator are clear and convincing that Recipient intended to commit an intentional program violation in defiance of the above SNAP regulations and rules by purposely providing false information as to household composition. Clear and convincing evidence has been presented by the Department of Public Health and Human Services, Program Compliance Bureau, that Recipient committed an intentional program violation by falsifying facts regarding household composition.

7. 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 intentional violation, 24 months for the second violation, permanently for the third violation and 10 years for misrepresenting residency or identity to obtain multiple benefits. 7 CFR 273.16(b). Recipient has committed an intentional program violation. Recipient shall be disqualified from SNAP for a period of 24 months, as this is her second intentional program violation.

ORDER

As set forth in the Findings of Fact and Conclusions of Law, the Department of Public Health and Human services, Program Compliance Bureau has properly determined that Recipient has committed a second intentional program violation. Recipient shall be disqualified from SNAP for a period of 24 months with such period beginning according to the 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 Montana Board of Public Assistance, P.O. Box 202953, Helena, Montana 59620. The notice of appeal must be received within fifteen days of the mailing of this decision.

DATED: October 1, 2010

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Harlan Rudolf, Hearing 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 this _____ day of October, 2010 at Helena, Montana as follows:

RECIPIENT e-copy: Monica West

_____
Sidnie DeTonancour, Administrative Assistant