



**DECISION OF
STATE AGENCY FOR
DISQUALIFICATION**

In the Matter of: [REDACTED]
For: Administrative Disqualification Hearing
Agency: [REDACTED] County Human Services
Docket: 193504

On July 6, 2017 Human Services Judge Victoria M. Lemberger held an evidentiary hearing under Minn. Stat. § 256.046.

The following people appeared at the hearing:

[REDACTED], Respondent
[REDACTED], Respondent's Attorney
[REDACTED], Paralegal, Observing
[REDACTED], Assistant County Attorney
[REDACTED], Investigator
[REDACTED], Financial Worker, observing
[REDACTED], Observing
[REDACTED], Lead Worker, Observing
[REDACTED], Witness
[REDACTED], Witness

The judge, based on the evidence in the record and considering the arguments of the parties, recommends the following findings of fact, conclusions of law, and order.

STATEMENT OF ISSUES

The issue raised in this appeal is:

Whether the agency properly proposed to disqualify respondent from receiving program benefits because she committed an intentional program violation.

FINDINGS OF FACT

1. On April 28, 2017, the [REDACTED] County Human Services (agency) filed a request for an administrative disqualification hearing. *Exhibit 1*. This request involves alleged intentional program violation by respondent. On May 23, 2017, the appeals office sent written notices to respondent by first class mail that a hearing on the agency's allegations was set for June 28, 2017. *Exhibit 26*. By agreement of the parties, the hearing was moved to July 6, 2017. Along with the hearing notice, the appeals office sent to respondent copies of all information it had received from the agency related to the allegations and the evidence. It also provided information about procedures governing the hearing process. The postal service did not return this material as undeliverable. On July 6, 2017, Human Services Judge Victoria M. Lemberger held an evidentiary hearing by telephone conference. The record remained open until July 21, 2017 to allow for closing arguments. The human services judge closed the record, consisting of thirty exhibits on that date.¹

2. The respondent has received assistance on and off since 2009. *Exhibit 4*. In her most recent combined application form, dated June 24, 2016, page 8 advised the respondent not to provide false information or hide information to get or continue benefits. *Exhibit 7*. The respondent signed and acknowledged that she had read and understood the penalty warnings and qualification questions. *Id.* She also acknowledged that the worker explained her rights and responsibilities. *Id.*

3. On July 27, 2015, the respondent reported a change in her household. *Exhibit 6*. She reported the birth of her daughter and that the child's father, [REDACTED]

¹ Exhibit 1 – request for disqualification hearing; Exhibit 2 – case summary for hearing; Exhibit 3 – fraud prevention investigation; Exhibit 4 – MAXIS summary; Exhibit 5 – case notes; Exhibit 6 – change report form 7/27/15; Exhibit 7 – combined application form 6/24/16; Exhibit 8 – referral to support and collections 7/6/16; Exhibit 9 – lease and housing contract addendum 7/25/16; Exhibit 10 – combined application addendum 11/2/16; Exhibit 11 – household report form 1/27/17; Exhibit 12 – notice of late or incomplete household report form 2/3/17; Exhibit 13 – address information requests; Exhibit 14 – affidavit of nonservice; Exhibit 15 – affidavit of service; Exhibit 16 – statewide supervision system person record search result Department of Corrections probation [REDACTED] district; Exhibit 17 – statewide supervision system person record search result report [REDACTED] County; Exhibit 18 – email from probation officer; Exhibit 19 – [REDACTED] Public Safety police supplemental report 10/17/16; Exhibit 20 – incident report 2/2/17; Exhibit 21 – child protection summary 1/31/17; Exhibit 22 – criminal history report; Exhibit 23 – summary of investigative findings 4/10/17; Exhibit 24 – notice of intentional program violation letter and waiver; Exhibit 25 – SMRLS requesting administrative hearing; Exhibit 26 – notices of hearing; Exhibit 27 – Respondent's opening argument; Exhibit 28 – property ownership information; Exhibit 29 – respondent's closing argument; Exhibit 30 – agency closing argument.

moved out. *Id.* On July 6, 2016, the appellant completed a form for child support and collections. *Exhibit 8.* She reported that she did not know where the father, [REDACTED] was at the time. *Id.*

4. The respondent completed a combined application addendum on November 2, 2017 where she reported the birth of her son. *Exhibit 10.* She reported that the child's father, [REDACTED] was currently in the [REDACTED] County jail. *Id.* Page 4 of the form advised respondent not to provide false information or hide information to get or to continue benefits. *Id.* The respondent acknowledged that she understood the penalty warnings and qualification questions. *Id.*

5. The respondent completed a household report that the agency received on January 27, 2017. *Exhibit 11.* The form advised the respondent that if she gave false information she might be tried for fraud and could lose her benefits. *Id.*

6. A process server completed an affidavit of nonservice. *Exhibit 14.* The process server went to the reported home of [REDACTED], (in [REDACTED]) and was told that he lived in [REDACTED] with the respondent. *Id.* The person also told the server, "[REDACTED] is really not supposed to live with her, you know what I mean, so he uses this address as a backup." *Id.* The process server was able to serve [REDACTED] with the summons and complaint later that day at the respondent's apartment. *Exhibit 15.*

7. In January 2017, investigator contacted the postmaster, requesting information on [REDACTED] address. *Exhibit 13.* The postmaster reported two addresses for [REDACTED]; one in [REDACTED] with the respondent and the other in [REDACTED]. *Id.*

8. On February 3, 2017, the agency sent the respondent a notice that her household report form was incomplete. *Exhibit 12.* The notice advised the respondent that she needed to add [REDACTED] to the household as he is the father of two children in the home. *Id.*

9. On February 6, 2017, the respondent contacted the agency and stated that [REDACTED] did not live with her. *Exhibit 23.* She stated that [REDACTED] put her address down when he was released from jail but that he is living in [REDACTED]. *Id.*

10. The respondent receives Section 8 housing assistance. *Exhibit 9.* [REDACTED] has an extensive criminal history. *Exhibits 16 through 20; Exhibit 22.* The respondent is aware that the terms of her housing assistance would prohibit [REDACTED] from living with her. *Respondent testimony.* [REDACTED] was interviewed by the police at the respondent's address. *Exhibits 20 and 21.*

11. The respondent injured her ankles in December 2016. One ankle was badly sprained and the other one was broken and required surgery. *Respondent testimony.* As a result, she was in a wheelchair and unable to care for her five children. *Id.* She admits

while she was in wheelchair, [REDACTED] was at her apartment every day to help her. *Id.* He would come at about 6 o'clock in the morning to help get the children ready for school and would leave at their bedtime. *Id.* The respondent was very strict about [REDACTED] behavior so she would not jeopardize her housing. *Id.*

12. At the time of the hearing, [REDACTED] was at a treatment center for his substance abuse. [REDACTED] testimony. He was released from jail on December 16, 2016. *Id.* At that time he told his probation officer that he would be living with the respondent. *Id.* He admitted that was not true and in fact he was couch hopping. *Id.* He did not want to live at the [REDACTED] address because the person there was a drug user. *Id.* He had difficulty getting his mail at the [REDACTED] address and in fact missed a court date because the person living there "had it in for him", and did not give him his mail. *Id.*

13. [REDACTED] moved in with [REDACTED] and her husband in mid-March 2017. *Grant testimony.* They have known [REDACTED] for more than 10 years. *Id.* Their daughters were friends. He does not pay rent but he does help around the home and does car repairs. *Id.* [REDACTED] lives in the basement where he will return once he completes treatment. *Id.*

CONCLUSIONS OF LAW

1. The Commissioner of Human Services has jurisdiction over this administrative disqualification hearing under Minn. Stat. § 256.046, subd. 1. That provision incorporates 7 C.F.R. § 273.16 for Supplemental Nutrition Assistance Program (SNAP).

2. The law says there are two conditions that must be met before determining whether an intentional program violation has occurred. First, the county or state agency must have provided the household with general advance notice of the penalties for fraud violations. 7 C.F.R. § 273.16(d). Second, the law requires the hearing authority to provide written notice of the allegations to the respondent at least 30 days before the date of the disqualification hearing. 7 C.F.R. § 273.16(e)(3). Here, both of these conditions have been met.

3. Once the notice of penalty and notice of hearing requirements are met, the substantive question the judge must address is whether the respondent committed, *and intended to commit*, an intentional program violation. 7 C.F.R. § 273.16(e)(6). An intentional program violation consists of having *intentionally*:

(1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or

(2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp 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).

7 C.F.R. § 273.16(c). (Emphasis Added).

4. Individuals disqualified from the SNAP program must also be excluded from the MFIP assistance unit until the SNAP disqualification ends. *Minn. Stat. §256J.024, subd. 3.*

5. The standard of proof is specifically outlined for SNAP is *clear and convincing* evidence that the individual committed, and intended to commit, the intentional program violation. 7 C.F.R. § 273.16(e)(6). *Clear and convincing proof* requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt; clear and convincing proof will be shown where the truth of the facts asserted is highly probable. *In re Estate of Lobe, 348 N.W.2d 413 (Minn. App. 1984).*

6. Usually within ten days of the change, MFIP and SNAP recipients must report changes such as employment, income and household composition. 7 C.F.R. 273.3(a); and *Minn. Stat. §256J.30, subd. 9.*

7. Based on the evidence presented, I conclude that the agency has not met its burden of proof. Much of the agency's case is circumstantial and while it is strong, does not depend on eyewitnesses. It is not disputed that the respondent suffered a severe injury and would need assistance in caring for her children. As [REDACTED] was living in the area and the father of two of her children, she would naturally rely upon him for assistance in caring, at minimum, his two children. Finally, and most compelling, is the testimony of [REDACTED], who has no reason to lie or misrepresent that [REDACTED] was living with her and her husband. Because the agency has not met its burden of proof, the agency's request for an administrative disqualification should be denied.

RECOMMENDED ORDER

THE HUMAN SERVICES JUDGE RECOMMENDS THAT, according to the findings of fact and conclusions of law, the agency's request for a disqualification be DENIED.

Victoria M. Lemberger
Human Services Judge

Date

ORDER OF THE COMMISSIONER

IT IS THEREFORE ORDERED THAT based upon all the evidence and proceedings, the Commissioner of Human Services adopts the judge's recommended findings of fact, conclusions of law, and order as her final decision.

FOR THE COMMISSIONER OF HUMAN SERVICES:

Date

cc: [REDACTED], Respondent
[REDACTED], Respondent's Attorney
[REDACTED] County Human Services
[REDACTED], DHS, 0245

FURTHER APPEAL RIGHTS

This decision is final, unless you take further action.

Appellants who disagree with this decision should consider seeking legal counsel to identify further legal recourse.

If you disagree with the effect this decision has on your eligibility for **Supplemental Nutrition Assistance Program (SNAP), Minnesota Family Investment Program (MFIP), or Diversionary Work Program (DWP)** benefits, you may:

- **Start an appeal in the district court.** This is a separate legal proceeding that you must start *within 30 days of the date of this decision*. You start this proceeding by serving a written copy of a notice of appeal upon the Commissioner and any other adverse party of record, and filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statute § 256.045, subdivision 7.²

If you disagree with this effect this decision has on your eligibility for **General Assistance (GA), Minnesota Supplemental Aid (MSA), MinnesotaCare or Child Care** benefits, you may:

- **Request the Appeals Office reconsider this decision.** The request must state the reasons why you believe your appeal should be reconsidered. The request may include legal arguments and may include proposed additional evidence supporting the request; however, if you submit additional evidence, you must explain why it was not provided at the time of the hearing. The request must be *in writing*, be made *within 30 days of the date of this decision*, and a *copy of the request must be sent to the other parties*. Send your written request, with your docket number listed, to: *Appeals Office, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941*. You may also fax the request to (651) 431-7523.
- **Start an appeal in the district court.** This is a separate legal proceeding that you must start *within 30 days of the date of this decision*. You start this proceeding by serving a written copy of a notice of appeal upon the Commissioner and any other adverse party of record, and filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statute § 256.045, subdivision 7.

² County agencies do not have the option of appealing decisions about Supplemental Nutrition Assistance Program (SNAP), Minnesota Family Investment Program (MFIP), or Diversionary Work Program (DWP) benefits to district court under 7 C.F.R. § 273.15(q)(2) and Minnesota Statute § 256J.40.