

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS**

ADMINISTRATIVE APPEAL SECTION

In Re Appeal of:

Docket Number:	AA-3425	
Appeal No(s)	1428566	FSOP
AG No.	5006696479	
Hearing Request Date:	07/28/2008	
Hearing Decision Date:	12/04/2008 / CSA	
Appeal Request Date:	12/19/2008	
Agency:	CUYAHOGA CDJFS	

Administrative Appeal Decision

The appellant is appealing the agency's July, 2008, notice of food stamp disqualification for intentional program violation related to a guilty plea to a misdemeanor theft offense he entered that same month. That notice advised the appellant that it was subject to state hearing rights regarding only the amount of food stamps available to remaining assistance group members during the one year disqualification period. Instead, at the hearing the appellant argued the broader question of whether the guilty plea and court judgment constituted an intentional program violation as defined in OAC Chapter 6-20. The hearing officer overruled the appeal, finding that the proposed disqualification was authorized by the fact that "the appellant pled guilty to theft, a criminal offense, in connection to the FS overpayment under an indictment which indicated theft by fraud and/or deception."

In his request for administrative appeal the appellant suggests a Statement of Error that the hearing decision is contrary to the weight of the evidence presented at the hearing regarding the content of the appellant's guilty plea. But we hold that the Bureau of State Hearings lacks jurisdiction over this issue entirely.

Although the Bureau has broad jurisdiction under OAC 5101:6-3-01 over any agency action "to reduce, suspend, terminate, or withhold" food stamp benefits, any agency action to prospectively disqualify an individual from food stamp participation due to an intentional program violation is governed by OAC Chapter 6-20, which significantly limits the Bureau's jurisdiction. "An individual may be disqualified ... for intentional program violation based on one of the following.

- (1) A finding by a court that the individual has committed a criminal offense connected to violation of the OWF and/or PRC program, and/or food stamp requirements.
- (2) A disqualification consent agreement, signed by the individual, in accordance with rule 5101:6-20-40 of the Administrative Code.
- (3) An administrative disqualification hearing decision that finds that the individual has committed an intentional program violation.
- (4) A waiver of the right to an administrative disqualification hearing, signed by the individual, in accordance with rule 5101:6-20-30 of the Administrative Code.”¹

A disqualification based on an administrative adjudication of intentional program violation is initiated by the agency and determined by a state hearing officer, regardless of the attendance of the individual at the hearing.² The administrative disqualification hearing decision is not subject to an administrative appeal and must be appealed directly to court.³ Either the decision or a separate court decision which “finds that an individual committed intentional program violation” may form the basis for an agency notice of disqualification, which is not subject to further state hearing review.⁴

In this case, then, the hearing officer correctly overruled the appeal, but should have done so on the basis that the hearing request “concerns an issue that is not appealable...”⁵

DECISION

We therefore ORDER that the hearing decision is AFFIRMED.

Administrative Appeal Officer

¹ OAC 5101:6-20-01(B)

² OAC 5101:6-20-14

³ OAC 5101:6-20-19

⁴ OAC 5101:6-20-18, 6-20-50 Either a disqualification consent agreement or signed waiver of administrative disqualification hearing can also form the basis for the notice of disqualification.

⁵ OAC 5101:6-5-03(C)(3), 6-7-01(C)(3)

CONCUR:

Administrative Appeal Officer

Chief Legal Counsel

Date of Issuance: January 6, 2009

Notice to Appellant

This Administrative Appeal decision is the final decision on this appeal from the state department of job & family services. It is binding on the department and agency, unless it is reversed or modified on appeal to the court of common pleas.

An Appellant who disagrees with this decision may appeal it to the court of common pleas pursuant to sections 119.12 and 5101.35(E) of the Revised Code. The Appellant shall mail the original notice of appeal to the department at the following address:

**Ohio Department of Job & Family Services
Office of Legal Services
30 E. Broad Street, 31st Floor
Columbus, OH 43215-3414**

The Appellant must also file a copy of the notice of appeal with the court of common pleas in the county in which the Appellant resides (Franklin County, if the Appellant does not reside in Ohio). Please note: Both the mailing to the department and the filing with the court must occur within thirty (30) calendar days of the date of issuance of this decision.

If you have questions about appealing to a court, contact your attorney, local legal aid society, or bar association. If you want information about free legal services, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888.

cc:

Director, CUYAHOGA CDJFS
RAMOSD, ASHTOC, Bureau of State Hearings