

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5069485125	BUTLER	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1380615	FSOP	OVERRULED
No Compliance Required		
<u>Decision Date:</u>	03/12/2008	
<u>Request Date:</u>	11/05/2007	
<u>Hearing Officer:</u>	TINA DYEHOUSE	

State Hearing Decision

ISSUE SECTION:

Issue #1 – 1380615:

When the Agency determines that an individual has committed an intention program violation, they can have a hearing or sign an agreement with the Agency. On 7-18-07, the Appellant signed a disqualification consent agreement with the Butler County Department of Job and Family Services (Agency).

The Appellant asked for a hearing because she disagrees with the intentional program violation and would like an administrative disqualification hearing. But the Appellant already signed a disqualification consent agreement with the Agency. So she is not eligible for an administrative disqualification hearing.

PROCEDURAL MATTERS:

On 7-18-07, the Agency mailed prior notice. On 11-5-07, the Bureau of State Hearings received the Appellant's written state hearing request. The hearing was scheduled for 11-29-07. At the Appellant's request, the hearing was rescheduled to 12-13-07, and again to 12-27-07. On 12-27-07, the Appellant advised me that she wanted an administrative disqualification hearing on her intentional program violation. I referred the case to Columbus to review for acceptance. The Administrative Disqualification Unit returned the case to me for a regular state hearing, indicating that jurisdiction no longer existed for an IPV hearing because the Appellant signed a disqualification consent agreement. The hearing was rescheduled and conducted on 2-6-08. All participants were sworn in: the Appellant and Arlene Rader and Melissa Hornsby, Agency representatives. I received the appeal summary on 11-26-07.

FINDINGS OF FACT:

1. On 7-17-07, the Appellant was discharged from the hospital after a surgery. She had general anesthesia. The hospital gave her written instructions not to "make any important decisions, such as sign important papers" for the next 24 hours. (exhibit E)

2. On 7-18-07, the Agency visited the Appellant to interview her and talk to her regarding their determination that she had committed an intentional program violation.
3. On 7-18-07, the Appellant signed a disqualification consent agreement, accepting the disqualification (exhibit A).
4. On 7-19-07, the Agency mailed the Appellant a notice of disqualification for intentional program violation, confirming that she had signed a consent agreement and agreed to a twelve-month period of disqualification from 8-1-07 through 7-31-07 (exhibit B).
5. On 8-27-07, the Appellant requested a state hearing on the Food Stamp overpayment (appeal #:1368713). On 11-8-07, the decision was issued. The decision found that the overpayment calculated by the Agency could not be affirmed, because the Agency used the gross income standard to determine the overpayment amount. The household had a disabled member, so the household was not subject to the gross income standard. The Hearing Officer concluded that the Agency was not authorized to collect the overpayment.
6. On 11-5-07, the Appellant requested this state hearing. She did not want another hearing on the Food Stamp overpayment amount; she wanted an administrative disqualification hearing on the finding that she committed an intention program violation.

CONCLUSIONS OF POLICY:

The Agency explained that the overpayment originated due to unreported adoption assistance income in the household. The Appellant testified that she had not intentionally concealed the income. She testified that she had surgery the day before the Agency came to see her. She had gallbladder surgery, a cyst removed from her uterus and thermal abrasion to cauterize her uterus and six moles removed. She general anesthesia and was taking pain medication. She cited the hospital discharge instructions (exhibit E) stating that she should not sign important papers in the 24 hours after the surgery. She testified that she told them three times that she had surgery. She signed the paperwork, because she was caught off guard. She testified that when she signed the paperwork, she did not understand that she was waiving the right to a hearing on the disqualification. She understood that she would be disqualified, but she did not agree with the disqualification.

The Agency representative testified that she asked the Appellant several times, if the Appellant wanted her to come back. She testified that the Appellant told her that she had doctor's orders not to sign papers, but did not tell her the extent of her surgery. The Agency representative also testified that she thought that the Appellant did not dispute the overpayment, but disputed the way it was worded. The Agency felt comfortable that they understood what the Appellant was signing.

The process of requesting an administrative disqualification hearing is initiated by the Agency.¹ When the Agency determines that there has been an intentional program violation, the Agency has the option of having the recipient sign a disqualification consent agreement.² When an individual suspected of committing an intentional program violation signs the consent agreement

¹ Ohio Admin. Code § 5101:6-20-10 (A) (2003)

² Ohio Admin. Code § 5101:6-20-40 (A) (2003)

they will be disqualified.³ Here, the Agency did not ask for an administrative disqualification hearing, because the Appellant signed the consent agreement on 7-18-07. Because the Appellant accepted the disqualification, there are no further appeal rights.

HEARING OFFICER RECOMMENDATIONS:

Issue #1 – 1380615:

Appeal number 1380615 should be OVERRULED.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Issue #1 – 1380615:

Finding the hearing officer's decision to be supported by the evidence, the recommendation shown above is adopted. The appeal is OVERRULED.

Exhibits:

³ Ohio Admin. Code § 5101:6-20-40 (G) (2003)

Appellant:

1 – State hearing request – 7 pp

Agency:

A – Disqualification consent agreement, signed 7-18-07

B – Notice of disqualification for intentional program violation – 2 pp

C – Manual Food Stamp notice, signed 7-18-07

D – Food Stamp repayment agreement, dated 8-27-07

E – Discharge instructions from the hospital, dated 7-17-07 (2 copies, Agency refaxed exhibit for clarity)

Hearing Authority

March 12, 2008

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing supervisor at the CINCINNATI District hearing section at 1-866-635-3748.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. BOX 182825, Columbus, OH 43218-2825 or fax: (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Bureau of State Hearings within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)* During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

Aviso a la Apelante

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord

administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

Appendix

Exhibits:

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

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