

May 7, 2021

Amy Kershaw
Commissioner, Massachusetts Department of Transitional Assistance
Department of Transitional Assistance
600 Washington Street, Boston, Massachusetts 02111

Dear Commissioner Kershaw:

I am writing on behalf of ██████████ ██████████, AP ID 1666939, to request that DTA vacate one or more long ago IPV findings in order to remove the disqualification that has barred ██████████ ██████████ from SNAP for 30 years and is denying her critical nutrition benefits. The disqualification should be removed because the penalties did not follow the sequence required by federal law and because there is no evidence in the record that ██████████ – who was in the throes of addiction and suffering from PTSD – had the requisite willful, knowing and deceitful intent.

1. The penalties imposed on ██████████ did not follow the sequence required by federal law.

Federal IPV regulations at the time of the IPV determinations (1987-1991) provided that “Individuals found to have committed intentional program violation . . . shall be ineligible to participate in the program for six months for the first violation, 12 months for the second violation, and permanently for the third violation.” 7 C.F.R. § 273.16(b)(effective Feb. 15, 1983). Adhering to the sequence in the regulation is important. The rationale for increasingly harsh penalties is that the lighter penalties deter further violations. If the lighter penalty is imposed after the harsher penalty the lighter penalty does not have the intended deterrent effect.

In this case, the Department of Public Welfare (DPW) did not follow the sequence of penalties specified by the regulation. ██████████ first alleged violation was committed in September 1985. That violation was determined by DPW to have been an IPV in April 1987. However, in January 1987, *before* it imposed the disqualification for the first violation, DPW disqualified her for a second alleged violation committed in February 1986. Because it did the disqualifications out of order, DPW in April 1987 imposed a 12-month disqualification for the *first* (1985) violation. This 12-month disqualification did not comply with federal law at the time and should therefore be vacated.

Once the 12-month disqualification is removed, the permanent disqualification (determined in 1991) must also be removed since it was not imposed following a properly determined 12-month disqualification.

2. ██████████ was suffering from crack addiction and PTSD and did not have the requisite intent to commit an IPV.

██████████ is a survivor of horrific and sustained physical, sexual and mental abuse. She was sexually abused by an uncle beginning at age 9. She had her first child at age 14 as a result of statutory rape. Her partner forced her into prostitution and introduced her to crack. By age 16 she was addicted, most likely self-medicating for the abuse she had suffered.

An intentional program violation includes an action such as making a false statement to obtain food stamps, only if the action “is committed knowingly, willfully, and/or with deceitful intent.” 106 C.M.R. § 367.525. The violations ██████████ is alleged to have committed all involved requesting and obtaining replacement food stamp ATPs (Authorizations to Participate), which she claimed were lost even though she had transacted the originals. ██████████ has no memory at all of what she is supposed to have done. She does not dispute that she reported the ATPs lost or stolen and requested replacements. But she does not know if she forgot that she had received the originals because of her addiction or PTSD or had some other reason for reporting them lost or stolen. The disqualification decisions concluded that the fact that she had gotten penalty warnings and had signed for and transacted the original and replacement ATPs established that the violations were intentional. However, nothing in any of the decisions supports a finding that the violations were “committed knowingly, willfully, and/or with deceitful intent.”

Moreover, the fact that she allegedly committed exactly the same type of offense three times – even after being disqualified – suggests that her actions were not “knowing” and that she did not have the requisite “deceitful intent.”² Certainly, a rational person would know after the first disqualification that she would be penalized if she reported an ATP lost or stolen after she had transacted it.

██████████ has made tremendous strides in overcoming the challenges of opioid addiction. In 1999, she participated in a detox program and overcame her crack addiction. She obtained counseling for her PTSD. She worked at the Pine Street Inn for over five years, only stopping when the pandemic made conditions unsafe.

Now she is unemployed and is in great need of SNAP. We respectfully request that one or more of the disqualifications be vacated so that she can receive this critical nutrition assistance.

Thank you very much for your consideration.

Very truly yours,
Aisha Sleiman

CC: Sarah Stuart, Assistant Commissioner for Change Management

¹ The total value of alleged violations was \$421.

² FNS recognizes that “some mentally disabled individuals may lack the ability to form the intent necessary for establishing an IPV,” https://fns-prod.azureedge.net/sites/default/files/a-fraud_policy.pdf.

