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FILED  
MAY 25 2012

EMPLOYEE APPEALS BOARD

**BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD**

**ROSE H. DAVIS**

**APPELLANT**

**VS.**

**DOCKET NO. 12-005**

**MISSISSIPPI DEPARTMENT OF HUMAN SERVICES**

**RESPONDENT**

**ORDER**

A hearing was held on Rose H. Davis' appeal on the 25<sup>th</sup> day of April, 2012. Rose H. Davis (hereinafter "Davis" or "Appellant") represented herself. The Mississippi Department of Human Services (hereinafter "MDHS") was represented by Steven Wansley.

**FINDINGS OF FACT**

1. At all material times, Davis was an employee of the MDHS.
2. Davis began her employment with the MDHS in August, 1995.
3. Davis was terminated from the MDHS by letter dated January 11, 2012, with an effective termination date of January 12, 2012. The termination letter was signed by Mark Smith, MDHS Deputy Executive Director.
4. Davis' January 11, 2012, termination letter provided that Davis' termination was based on her violation of the following specific offenses:

**GROUP III, NUMBER 4, "Falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official state documents."**

**SPECIFICALLY:**

You falsified an official state document. You falsified the Mississippi Department of Human Services Application for Disaster Supplemental Nutrition Assistance Program (DSNAP) Benefits Form (Mississippi MDHS-EA-500 Form), Revised April 1, 2010. You failed to document required income on the DSNAP application form for Case Number [REDACTED], completed by your husband, [REDACTED], and dated May 20,

2011. The benefits were applied for at the Quitman County Division of Economic Assistance Office. You failed to report all income for your household. It was verified by division staff that your husband is employed and that you also have other employment. None of the additional income from your other jobs were reported. Notices were mailed to you regarding this unreported income. The first notice was sent to your home on July 5, 2011, requesting clarification. On July 19, 2011, a notice was sent to you requesting that you or your husband contact the DSNAP Unit to provide a statement regarding your claim. You called the office on July 26, 2011, to respond to the request and said that you would provide verification. However, you did not provide this verification, as requested. The addition of this income to your household resulted in an ineligibility based on excess income. A Suspected Intentional Program Violation (SIPV) claim was written for \$526 in Case Number [REDACTED]. You willfully signed this state document certifying, under penalty of perjury, "that the information given is correct and completed to the best of my knowledge" and with the understanding that your household would not be eligible to receive these benefits if you refuse to give any required information.

5. At all material times, Mark Smith was the Deputy Executive Director of the MDHS.
6. Pursuant to a memorandum dated July 17, 2008, Don Thompson, Executive Director of the MDHS delegated signature authority for "due process procedures and grievance resolution at the step four, agency level," to Mark Smith, Deputy Director for the MDHS.
7. On May 20, 2011, [REDACTED] submitted an application for Disaster Supplemental Nutrition Assistance Program (DSNAP) benefits to the MDHS.
8. [REDACTED], at the time he submitted the DSNAP Application, was the husband of Rose Davis.

9. The May 20, 2011, DSNAP Application submitted by [REDACTED] required that the applicant "list any income your household members received or expect to receive while the disaster nutrition assistance is operating. (DSNAP benefit period 4/15/11 - 5/14/11)."

10. [REDACTED] listed as income on the DSNAP Application the following people and the following amounts of monthly take-home income:

[REDACTED]	[REDACTED]
Rose Davis	[REDACTED]
Total	[REDACTED]

11. At the time [REDACTED] submitted the DSNAP Application, he was also being paid a monthly salary of [REDACTED] for work he performed as a [REDACTED] did not list his [REDACTED] salary on the DSNAP Application.

12. Rose Davis did not sign the DSNAP Application.

13. The DSNAP Application was signed only by [REDACTED]

14. The DSNAP Application was submitted to the MDHS solely by [REDACTED]

15. [REDACTED], by signing the DSNAP Application, certified the following:

I understand the questions on this application and the penalties for hiding or giving false information. My household is in need of immediate food assistance as a result of the disaster. I certify, under penalty of perjury, that the information I have given is correct and complete to the best of my knowledge. I also authorize the release of any information necessary to determine the correctness of my certification. I understand that if I disagree with any action taken on my case, I have the right to request a fair hearing orally or in writing.

16. [REDACTED] failure to list his [REDACTED] salary on the DSNAP Application resulted in an overpayment of DSNAP benefits in the amount of [REDACTED].

17. The MDHS sent a SNAP - Notice of IPV Disqualification dated September 28, 2011, to: [REDACTED]. While the letter was addressed to [REDACTED], Rose Davis' name was inserted in the body of the letter. (This document was Exhibit 12 at the appeals hearing).

18. The MDHS sent a SNAP - Notice of IPV Disqualification dated September 28, 2011, to [REDACTED] (This document was Exhibit 13 at the appeals hearing).

19. The only difference between Exhibit 12 and Exhibit 13 is that Exhibit 12 in the body states "Ms. Rose Davis" [as opposed to Mr. [REDACTED]] has been disqualified from receiving SNAP benefits for 12 months.

20. Rose Davis did not know that [REDACTED] had submitted the DSNAP Application until Ms. Davis received inquiry from DHS concerning household income.

21. At all material times, Lisa Collier ("Collier") was an employee of MDHS. Collier was the Manager of the SNAP Program and she coordinated disaster programs for MDHS.

22. At all material times, Rose Davis was an MDHS Supervisor II for MDHS and her work area was Panola County.

23. On July 5, 2011, a request for information was sent to Rose Davis.

24. On or about July 28, 2011, a conversation occurred between Collier and Rose Davis. During this conversation, Davis' household income and related issues concerning [REDACTED] DSNAP Application were discussed.

25. Collier received all of the income information she requested from Rose Davis, by the date of September 12, 2011.

26. Collier did not have a conversation with Rose Davis before the DSNAP Application was submitted by [REDACTED].

27. Rose Davis was provided her pre-termination hearing.

28. On or about September 12, 2011, Rose Davis and [REDACTED] at separate times, and in separate places, signed a Disqualification Consent Agreement acknowledging she would be ineligible to participate in the food stamp program for a period of time.

29. On or about September 12, 2011, [REDACTED] and Rose Davis at separate times, and in separate places, signed a Promissory Note agreeing to pay the State of Mississippi [REDACTED] as a result of the DSNAP overpayment.

30. Rose Davis did not falsify an official state document.

#### CONCLUSIONS OF LAW

Davis, as the Appellant, has the burden of proof on her appeal. To prevail on her appeal, Davis must prove either that (1) the allegations upon which her termination was based are not true or (2) if true, those facts were not sufficient grounds for the action taken against Davis by the MDHS.

Davis' termination from MDHS was based on MDHS' position that Davis "falsified an official state document." Davis' termination was not based on any group offense other than falsification of an official state document. Mississippi State Personnel Board Policy and Procedures Manual provides "the presiding hearing officer shall hear or receive evidence on only those reasons and allegations contained in the responding agency's final disciplinary notice to the employee of such action." See §10.7.18 Mississippi State Personnel Policy & Procedures Manual. In the present case, MDHS' allegations upon which Davis' termination is based were limited to falsification of an official state document.

Having considered the testimony of all witnesses and exhibits introduced into evidence, I find that Davis has met her burden of proof and has proven that the allegation that she falsified records was not true. Accordingly, Rose Davis' termination from MDHS is REVERSED. The reasons for my opinion follow.

Rose Davis' MDHS termination was based on the allegation that she falsified the DSNAP Application and that she failed to provide certain information to Ms. Collier and the MDHS. See Rose Davis' termination letter dated January 11, 2012. The January 11, 2012, termination letter stated that Rose Davis engaged in the following falsification of documents:

- (1) You falsified an official state document.
- (2) You falsified the Mississippi Department of Human Service Application for Disaster Supplemental Nutrition Assistance Program (DSNAP) Benefits Form.
- (3) You willfully signed this state document certifying, under penalty of perjury, "that the information given is correct and completed to the best of my knowledge."

There were three witnesses, in addition to Rose Davis, that testified at the appeals hearing held before the undersigned hearing officer. Those witnesses were Gloria Jackson, Lisa Collier, and Luvenia Mamon. Neither Jackson, Collier, or Mamon testified that Rose Davis signed the DSNAP Application. In fact, at the appeals hearing the MDHS did not attempt to establish that Rose Davis signed the DSNAP Application. MDHS' position at the appeals hearing was that Rose Davis knew her husband had submitted an untrue DSNAP Application and that when she was asked to provide certain financial information she did not do so timely. No evidence is in the record that Rose Davis falsified an official state document, or any other document. There is no evidence in the record that Rose Davis

"willfully signed the state document certifying, under penalty of perjury 'that the information given is correct and completed to the best of my knowledge.'" Accordingly, I find as a fact that Rose Davis has met her burden of proof that she did not falsify the DSNAP Application or any official state document.

MDHS, in support of its contention that Rose Davis falsified an official state document, contends that Rose Davis admitted, at least implicitly, that she falsified the DSNAP Application because she, in conjunction with [REDACTED], signed a Promissory Note to reimburse the State of Mississippi for the [REDACTED] DSNAP payment and because she and [REDACTED] signed a "Disqualification Consent Agreement."

Ms. Davis admitted she signed both the Promissory Note and the Disqualification Consent Agreement. Ms. Davis explained that Ms. Bell, a MDHS representative, came to Davis' office in Panola County. Before going to Panola County, Bell called Davis and said she needed the Disqualification Consent Form "signed today" and that "nothing would be done if [Davis] signed the form." While without an explanation the fact that Rose Davis signed both the Promissory Note and Disqualification Consent Agreement suggests that Rose Davis may have implicitly agreed she did something wrong in regard to the DSNAP Application – her explanation of why she signed the documents, which I find credible, refutes that suggestion. Rose Davis did not commit the Group III Number 4 Offense of "falsification of records such as, but not limited to vouchers, reports, time records, leave records, employment records or other official state document," because she signed the Promissory Note and Disqualification Consent Agreement.

To the extent Rose Davis failed to provide information requested by the MDHS as timely as MDHS wished, that does not constitute a falsification of records. The evidence

establishes that when MDHS initially requested income information from Rose Davis, Davis did not promptly respond. Later, Rose Davis produced some information to MDHS and then she discussed MDHS' request for information with Ms. Collier on or about July 28, 2011. Following this conversation, additional financial information was provided to MDHS. Collier admitted at the appeals hearing that although she did not initially receive all of the requested information she did receive all the requested information following the July 28, 2011, phone conversation with Rose Davis. While it is unclear the exact date Collier and MDHS received all of the requested information, all information requested was received by September 12, 2011, the date Rose Davis signed the Promissory Note.

Ms. Davis explained at the appeals hearing that she obtained the requested information at different times and from different sources. She stated she did not intentionally delay providing the requested information. Having closely observed Rose Davis' demeanor when she was explaining her attempts to obtain and provide the information to MDHS, I find her explanation credible. Rose Davis did not intentionally delay providing the information to the MDHS and there is no factual basis to support MDHS' position that Rose Davis' failure to provide information to it within the time MDHS deemed she should have submitted the information constituted falsifying "an official state document."

In summary, there is no competent proof that Rose Davis falsified an official state document, as alleged by the MDHS. At most, Rose Davis did not respond to MDHS' inquiries concerning financial information as timely as MDHS preferred. Whatever Rose Davis' failure in this regard may constitute, it does not constitute falsifying an official state

document, the only basis MDHS listed for Rose Davis' termination. Accordingly, Rose Davis' termination is REVERSED.

MDHS is directed to reinstate Rose Davis to her employment status effective as of the date of her termination and to restore to her all of her rights and benefits including back pay, medical leave and personal leave to the extent allowed by law. It is also ordered that Rose Davis be restored to all of her retirement benefits she would have been entitled to had she not been erroneously terminated, provided the integrity of such benefits remain uncompromised in accordance with all applicable laws, policies, rules and regulations.

SO ORDERED THIS THE 25 DAY OF MAY, 2012.

MISSISSIPPI EMPLOYEE APPEALS BOARD

By: Michael Watts  
MICHAEL N. WATTS  
Presiding Hearing Officer