

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS

STATE OF GEORGIA

JANE DOE,

Docket No. OSAH-_____

Petitioner,

V.

Agency Reference No. 123456789

GEORGIA DEPARTMENT OF HUMAN SERVICES,
DIVISION OF FAMILY AND CHILDREN SERVICES,

Respondent

MOTION FOR INTERPRETER AT HEARING

Now comes JANE DOE, Petitioner herein, and moves for the appointment of a court-certified interpreter at her upcoming hearing to provide her with meaningful access to the Supplemental Nutrition Assistance Program (SNAP).

1.

This case involves the termination of SNAP benefits for Petitioner's minor child. Neither Petitioner nor her witnesses speak English.

2.

Participation in the hearing on the termination of Petitioner's child's SNAP benefits will require testimony from Petitioner and her witnesses.

3.

Petitioner cannot afford to pay an interpreter to attend the hearing with her, as her household income falls below the federal poverty level.

4.

The Georgia Department of Human Services (DHS), Division of Family and Children Services (DFCS) administers the federal SNAP in Georgia.

5.

The Office of State Administrative Hearings contracts with the Georgia DHS to conduct administrative hearings on SNAP cases.

6.

Federal law governing the SNAP provides an administrative hearing to recipients whose benefits are denied, terminated or reduced. 7 C.F.R. 273.15(a). Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” 42 U.S.C. §2000d. This provision has been interpreted to require the provision of services in languages other than English. *Lau v. Nichols*, 414 U.S. 563 (1974).

7.

The due process clause of the Fourteenth Amendment to United States Constitution requires a recipient of public benefits be given an opportunity to contest a proposed termination of benefits, including the right to confront adverse witnesses and present her own evidence and arguments orally. *Goldberg v. Kelly*, 397 U.S.254, 268-269 (1970). Furthermore, “the opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.” *Id.* at 269-270.

8.

The Supreme Court of Georgia, citing Title VI, as amended, and the O.C.C.S.S.A, as amended, in addition to other authorities, held in *Ling v. State*, 288 Ga. 299, 300-01, 702

S.E.2d 881, 883 (2010), that an interpreter must be appointed for those who cannot communicate effectively in English in criminal cases and strongly stated that meaningful access to justice must be provided in *all Georgia courts* for persons who are limited English proficient (LEP) in order to comply with federal law. The court cautioned that “vigilance in protecting the rights of non-English speakers is required in all of our courts.” *Id.* at 302, 702 S.E.2d at 884.

9.

The Supreme Court of Georgia Rule on Use of Interpreters for Non-English Speaking and Hearing Impaired Persons applies to all criminal and civil proceedings in Georgia. The Rules state that all “other court-managed functions, including information counters, intake or filing offices, cashiers, records rooms, sheriff’s offices, probation and parole offices, alternative dispute resolution programs, *pro se* clinics, criminal diversion programs, anger management classes, detention facilities, and other similar offices, operations and programs, shall comply with Title VI of the Civil Rights Act of 1964.” Ga. Sup. Ct. Rule on the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons, Appendix A, II (2012).

10.

Title VI and the Georgia Supreme Court Rules governing interpreter use in Georgia require an interpreter, as needed, in **ALL** court proceedings. That interpreter must be competent and impartial. “It is critically important to ensure that interpreters are *competent* and not merely bilingual. . . . The DOJ Guidance emphasizes the importance of interpreter competency and states: ‘Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English.’ DOJ Guidance, 67 Fed.

Reg. at 41,461.” DOJ Letter to NC Administrative Office of the Courts, p. 9 (March 8, 2012).

11.

The American Bar Association (ABA) Standards on Language Access in Courts (ABA Standards) also recognize the critical importance of competency and impartiality. “The delivery of appropriate language access services in legal proceedings depends upon the provision of competent services provided by professional and well trained interpreters.” ABA Standards, February 2012, Standard 4, p.37. The terms “legal proceedings” and “courts” are intended to encompass all legal proceedings where important legal rights and benefits are involved, whether they are adjudicated in a criminal or civil matter, in problem-solving or therapeutic justice courts, or in an administrative hearing. *Id.* at 38.

12.

Specifically, the ABA Standards recognize that competency “includes language fluency, interpreting skills, familiarity with technical terms and courtroom culture and knowledge of codes of professional conduct for court interpreters.” *Id.* at 81. “Knowledge of codes of professional conduct” specifically addresses a competent interpreter’s ethical obligation to be impartial. *Id.* at 105; Ga. Sup. Ct. Rule on the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons, Appendix C, (2012).

13.

A bilingual DFCS staff member who is not a trained professional interpreter is not competent to interpret at a hearing where witnesses testify under oath because of the ethical requirements that require an interpreter be impartial. Standards VI-VII, Georgia Code of Professional Responsibility for Interpreters.

Wherefore, Petitioner requests that a court-certified interpreter be provided for her in the hearing set for _____, 2013.

This ____ day of _____, 2013.

::ADVOCATE'S NAME::
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CERTIFICATE OF SERVICE

The undersigned attorney for Petitioner does hereby certify that she has this day served the opposing party with a copy the foregoing Motion For Interpreter at Hearing by mailing a copy to it by United States Mail with adequate postage thereon to assure delivery to the following address:

Jane Smith
Street Address
City, State 12345
555-555-1212

This _____ day of _____, 2013.

::ADVOCATE'S NAME::

Attorney for Petitioner

Ga. Bar No. 123456

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