

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

██████████ 2019
Signature Confirmation

REQUEST #143898

CLIENT ID ██████████

AU ID# ██████████

ADMINISTRATIVE DISQUALIFICATION HEARING

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2019, the Department of Social Services (the "Department") requested an Administrative Disqualification Hearing ("ADH") to seek the disqualification of ██████████ (the "Defendant") from participating in the Supplemental Nutritional Assistance Program ("SNAP") for a period of one (1) year. The Department alleged that the Defendant committed an Intentional Program Violation ("IPV") as a result of the Defendant's SNAP trafficking. The Department seeks to recover the overpaid SNAP benefits of \$716.04. This is the Defendant's first IPV offense in the SNAP program.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") notified the Defendant of the initiation of the ADH process via certified mail. The notification included the notice of hearing, hearing summary, and an outline of Defendant's rights in the proceedings.

On ██████████ 2019, U.S. post office left notice of the certified mail at the Defendant's address. The Defendant did not claim the certified mail.

On ██████████ 2019, the post office returned the certified mail to OLCRAH as it had been unclaimed.

On [REDACTED] 2019, the undersigned mailed the hearing summary packet, including the hearing notice to the Defendant via regular U. S. mail. The post office has not returned the packet.

On [REDACTED] 2019, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an Administrative Disqualification Hearing. The Defendant was not present at the hearing. The Defendant did not show good cause for failing to appear.

The following individuals were present at the hearing:

William Carrasquillo, Investigator, Department's Representative
Maureen Foley-Roy, Hearing Officer

STATEMENTS OF THE ISSUES

The first issue to be decided is whether the Defendant committed an IPV of the SNAP program.

The second issue to be decided is whether the Department's proposal to recoup a SNAP overpayment is correct.

FINDINGS OF FACT

1. On [REDACTED] 2018, the United States Department of Agriculture, Food and Nutrition Services, SNAP Program ("FNS") charged the [REDACTED] located at [REDACTED] with trafficking in SNAP. (Exhibit 6: USDA letter dated [REDACTED])
2. On [REDACTED] 2019, the United States Department of Agriculture, Food and Nutrition Service, SNAP division, found that the [REDACTED] was trafficking in SNAP benefits and permanently disqualified the [REDACTED] from participating in SNAP. (Exhibit 7 : Letter from the USDA dated [REDACTED])
3. The Defendant was a recipient of SNAP benefits through [REDACTED] of 2019. He was receiving benefits for himself as a single individual. (Department Investigator's testimony)
4. On [REDACTED] and [REDACTED], the Department deposited \$192 in SNAP benefits in the Defendant's Electronic Benefits ("EBT") Account. (Exhibit 12: Benefit History)

5. On [REDACTED] 2018, the Department deposited \$160 in SNAP benefits in the EBT account. (Exhibit 12)
6. From [REDACTED] 2018 through [REDACTED] 2018, the Department deposited \$192 in the Defendant's EBT account each month. (Exhibit 12)
7. The [REDACTED] is a gas station and contains minimal groceries. In addition to the prepared food, the [REDACTED] sells milk, cheese, and bread. It has a deli and prepared food section. There is seating and microwaves available. (Exhibit 13)
8. There are no shopping baskets or shopping carts at the [REDACTED]. It is a gas station with a store and a restaurant. There is a car rental space on the property. (Exhibit 13: FNS form for General Store Information)
9. On [REDACTED] 2018, the Defendant's EBT card was used for three transactions at the [REDACTED]. At 10:54 am, the Defendant's EBT card was used for a purchase of \$38.24, at 12:09 pm, the Defendant's EBT card was used for a purchase of \$31.21 and at 1:41 pm, the Defendant's EBT card was used for a purchase of \$34.89.(Exhibit 5: Recipient Transaction History),
10. On [REDACTED], 2018, the Defendant's EBT card was used for two transactions at the [REDACTED]. At 7:32 am the Defendant's EBT card was used for a purchase of \$27.10 and at 7:34 am, the Defendant's EBT card was used for a purchase of \$31.05. (Exhibit 5)
11. On [REDACTED] 2018 at 2:31 pm the Defendant's EBT card was used for a purchase of \$31.86 at the [REDACTED]. (Exhibit 5)
12. On [REDACTED] 2018 at 10:55 am the Defendant's EBT card was used for a purchase of \$31.31 at the [REDACTED]. (Exhibit 5)
13. On [REDACTED] 2018 at 8:17 am the Defendant's EBT card was used for a purchase of \$30.12 at the [REDACTED]. (Exhibit 5)
14. On [REDACTED], 2018 at 11:30 am the Defendant's EBT card was used for a purchase of \$38.25 at the [REDACTED]. (Exhibit 5)
15. On [REDACTED], 2018 at 8:24 am the Defendant's EBT card was used for a purchase of \$36.42 at the [REDACTED]. (Exhibit 5)
16. On [REDACTED] 2018 at 9:26 am the Defendant's EBT card was used for a purchase of \$35.23 at the [REDACTED]. (Exhibit 5)
17. On [REDACTED] 2018 the Defendant's EBT card was used for a purchase of \$32.90 at 2:26 pm and a purchase of \$32 at 3:42 pm at the [REDACTED]. (Exhibit 5)

18. On [REDACTED] 2018 the Defendant's EBT card was used for a purchase of \$36.87 at 8:08 am and a purchase of \$35 at 12:02 pm at the [REDACTED] [REDACTED] (Exhibit 5)
19. On [REDACTED] the Defendant's EBT card was used for a purchase of \$35.12 at 7:45 am and a purchase of \$35.12 at 9:39 am at the [REDACTED] [REDACTED] (Exhibit 5)
20. On [REDACTED] the Defendant's EBT card was used for a purchase of \$35.36 at 8:38 am at the [REDACTED]. (Exhibit 5)
21. On [REDACTED] 2018 the Defendant's EBT card was used for a purchase of \$35.23 at 10:17 am at the [REDACTED]. (Exhibit 5)
22. On [REDACTED] 2018 the Defendant's EBT card was used for a purchase of \$39.81 at 1:36 pm at the [REDACTED]. (Exhibit 5)
23. On [REDACTED] 2018 the Defendant's EBT card was used for a purchase of \$32.95 at 11:49 am at the [REDACTED]. (Exhibit 5)
24. On [REDACTED] 2019, the Department sent the Defendant a letter advising that it had evidence that the Defendant had trafficked in SNAP benefits. The letter detailed the charges and the penalties. (Exhibit 2: Letter dated [REDACTED], 2019)
25. On [REDACTED] 2019, the Department sent the Defendant a Notice of Prehearing Interview and Waiver of Disqualification Hearing forms. (Exhibit 3: Notice of Prehearing Interview form and Exhibit 4: Waiver of Disqualification Hearing)
26. The Defendant did not return the Waiver of Disqualification hearing form. The Defendant did not respond to the notice of prehearing interview. The Defendant did not contact the Department regarding the charges or any of the forms. (Department's Investigator's testimony)
27. The Defendant has no previous intentional program violations. (Exhibit 10: Electronic Disqualified Recipient System)
28. On [REDACTED] [REDACTED], 2019, the Department requested an administration disqualification hearing.
29. On [REDACTED] 2019, the hearing notice and Department's summary was sent to the Defendant via certified mail. On [REDACTED], 2019, notice was left with the Defendant. On [REDACTED] 2019, the U.S post office returned the certified mail to OLCRAH as unclaimed. On [REDACTED] 2019, the hearing officer mailed notice of the hearing and the hearing summary to the Defendant via regular mail. The notice of hearing and

hearing packet has not been returned by the post office. (Hearing Officer's Exhibit 1: USPS Tracking information)

30. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Department requested an administrative hearing on [REDACTED] 2019. This decision is due not later than [REDACTED], 2019 and therefore is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the SNAP program.
2. Section 17b-88 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to recover any public assistance overpayment and take such other action as conforms to federal regulations, including, but not limited to, conducting administrative disqualification hearings.
3. Title 7 of the Code of Federal Regulations ("CFR") § 273.16(e) provides that the State agency shall conduct administrative disqualification hearings for individuals accused of Intentional Program Violation.
4. The Department's Uniform Policy Manual ("UPM") is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v Rowe*, 43 Conn Supp. 175 178 (194) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d712(1990)).
5. UPM § 7050 outlines the Administrative Disqualification Hearing process and provides that in the Food Stamp program the Department conducts Administrative Disqualification Hearings in certain instances of alleged intentional recipient error as an alternative to referrals to the court system for prosecution. Individuals, who are determined to have committed an intentional recipient error are subjected to recoupment requirements and, in some cases, are disqualified.
6. UPM § 7050.25 D 3 provides that if the assistance unit member or his or her representative cannot be located or fails to appear at a hearing without good cause, the hearing is conducted without the assistance unit member being represented.

7. 7 CFR § 271.2 (1) provides in part that the definition of trafficking includes the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.
8. 7 CFR § 273.16(c) defines intentional Program violation as follows:
For purposes of determining through administrative disqualification hearings whether or not a person has committed an intentional Program violation, intentional Program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts, or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamp coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).
9. 7 CFR § 273.16(e)(6) defines the criteria for determining intentional program as follows: The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed and intended to commit, an Intentional Program Violation.

The Department provided clear and convincing evidence that the following transactions constitute trafficking in the SNAP program: \$38.24, \$31.21, and \$34.89 on [REDACTED], 2018, \$27.10 and \$31.05 on [REDACTED] 2018, \$31.86 on [REDACTED] 2018, \$31.31 on [REDACTED] 2018, \$30.12 on [REDACTED] 2018, \$38.25 on [REDACTED], 2018, \$36.42 on [REDACTED] 2018, \$35.23 on [REDACTED] 2018, \$32.90 and \$32 on [REDACTED] 2018, \$36.87 and \$35.00 on [REDACTED] 2018, \$35.12 and \$35.12 on [REDACTED] 2018, \$35.36 on [REDACTED] 2018, \$35.23 on [REDACTED] 2018, \$39.81 on [REDACTED] 2018 and \$32.95 on [REDACTED] 2018 for a total of \$716.04.

The Department provided clear and convincing evidence to demonstrate that the Defendant conducted the SNAP transactions which were determined to be trafficking in the SNAP program.

The Department is correct to seek the disqualification of the Defendant from the SNAP program for a period of one year.

10.7 CFR § 273.18(a)(1)(ii) provides that a recipient claim is an amount owed because of benefits that are trafficked.

11.7 CFR § 273.18 (a)(2) states that this claim is a federal debt subject to this and other regulations governing federal debts. The State Agency must establish and collect any claims following these regulations.

12.7 CFR § 273.18(a)(4)(i) provides that each person who was an adult member of the household when the overpayment or trafficking occurred is responsible for paying a claim.

13. UPM § 7045.05 A 1 states that the Department recoups from the assistance unit which received the overpayment.

The Department is correct in seeking recoupment of SNAP benefits of \$716.04 from the Defendant.

DISCUSSION

Established at this hearing is the fact that the [REDACTED], where the Defendant conducted some of his SNAP transactions, was permanently disqualified from participating in the SNAP program due to trafficking in SNAP benefits. The evidence presented at the hearing indicates that [REDACTED] with its limited inventory and lack of shopping carts or even baskets, is a gas station with a small store and restaurant attached. There is limited inventory at the [REDACTED] store. Therefore the Department's assertion that the Defendant's multiple transactions in the same day and transactions on consecutive days in an establishment found guilty of trafficking in SNAP benefits are suspect is credible. The Defendant did not respond to the Department's assertions or appear at the hearing to provide any evidence or statement regarding the legitimacy of the transactions.

DECISION

The Defendant is **guilty** of committing a first intentional program violation in the SNAP program for trafficking of SNAP benefits and he is disqualified from the program.

The Defendant **must** make restitution of \$716.04, the amount of the benefits determined to be trafficking.



Maureen Foley-Roy
Hearing Officer

CC: Steven Markowski, DSS Fraud & Resources C.O.

OLCRAH.QA.DSS@ct.gov

William Carrasquillo, DSS Investigator, DSS R.O#30, Bridgeport

RIGHT TO APPEAL

The defendant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or his designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the defendant resides