

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

Hearing ID #: 144026

CLIENT ID #: ██████████

AU ID #: ██████████

ADMINISTRATIVE DISQUALIFICATION HEARING
NOTICE OF DECISION

PARTY

██████████
██████████

PROCEDURAL BACKGROUND

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 twelve (12) months. The Department alleged that the Defendant committed an Intentional Program Violation ("IPV"). The Department further seeks to recover an alleged overpayment of SNAP benefits in the amount of \$518.37.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued ██████████ (the "Defendant"), a notice regarding the initiation of the administrative disqualification hearing process via certified mail. The notice outlined the Defendant's rights within the proceedings. The ADH scheduled for ██████████, 2019. On ██████████, 2019, the U.S. Postal Service confirms the notice signed for at the Defendant's address. On ██████████, 2019, the Defendant called OLCRAH requesting a Reschedule of the ADH.

On ██████████, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued ██████████ (the "Defendant"), a notice regarding the initiation of the administrative disqualification hearing process via certified mail. The notice outlined the Defendant's rights within the proceedings. The ADH scheduled for

██████████, 2019. On ██████████ 2019, the U.S. Postal Service confirms the notice signed for at the Defendant's address.

On ██████████, 2019, the OLCRAH conducted the administrative disqualification hearing, in accordance with subsection (e), section 273.16, of Title 7 of the Code of Federal Regulations and section 17b-88 of the Connecticut General Statutes.

The Defendant was not present at the hearing.

The following individuals were present at the hearing:

William Carrasquillo, Investigator, Department's Representative
Miklos Mencseli, Hearing Officer

The hearing record closed on ██████████, 2019.

STATEMENTS OF THE ISSUE

The issue to be decided is whether the Defendant committed an IPV of the SNAP program, is subject to disqualification from program participation for 12 months and whether the resulting overpayment of benefits is subject to recovery.

FINDINGS OF FACT

1. On ██████████ 2019, the United States Department of Agriculture ("USDA") Food and Nutrition Services ("FNS") sent ██████████, ██████████ a notice charging the firm of violating the SNAP regulations. Based on the analysis of the Electronic Benefit Transfer ("EBT") transactions, FNS is charging the firm with trafficking of the SNAP program. (Exhibit 6: USDA letter dated ██████-19)
2. On ██████████ 2019, the United States Department of Agriculture ("USDA") Food and Nutrition Services ("FNS") sent ██████████ a notice of disqualification from the SNAP program effective the date of the letter. (Exhibit 7: USDA letter dated ██████-19)
3. FNS sent a report to the Department of the EBT transactions that occurred at ██████████ to investigate and take action against individual SNAP recipients suspected of SNAP trafficking. (Summary)
4. The Department completed an EBT inquiry for the period of ██████████, 2018, through ██████████ 2019, at ██████████. *The Defendant had transactions of high dollar amounts, transactions within seconds of each other and multiple transactions within a 24 hour period which corresponded with the alerted transactions.* (Summary, Exhibit 5: Printout of Defendant's EBT transactions)

5. The Defendant had the following transactions:

<u>Transaction Date</u>	<u>Amount</u>	<u>Transaction Date</u>	<u>Amount</u>
█-18 @ 7:29am	\$49.88	█-18 @ 7:29am	\$51.13
█-18 @ 8:03am	\$39.58	█-18 @ 8:03am	\$33.11
█-18 @ 3:29pm	\$20.37	█18 @ 12:29pm	\$48.21
█-18 @ 12:29pm	\$30.09	█18 @ 12:31pm	\$21.03
█-18 @ 9:02am	\$35.14	█18 @ 9:02am	\$40.11
█19 @ 7:51am	\$20.00	█19 @ 7:53am	\$16.22
█19 @ 3:42pm	\$32.50	█19 @ 3:35pm	\$43.77
█-19 @ 3:35pm	\$37.23		

(Exhibit 2: Overpayment/Disqualification letters dated █19, Exhibit 2: EBT Transaction History printout)

6. The Defendant for the period of █ 2018 through █ 2018 received SNAP benefits of \$192.00, \$185.00 for the period of █ 2019 through █ 2019 a month for a household of one member. (Exhibit 10: Defendant's Benefit History printout)
7. The Defendant did not request a new EBT card for the period of █ 2018 through █ 2019. (Exhibit 11: Benefit History Card Issuance for the Defendant)
8. The Department determined that the Defendant made a total of \$518.37 EBT transactions at █ for the period of █ 2018 through █ 2019 that were trafficking. (Summary, Exhibit 2: Letter dated █-19, Exhibit 3: Form W-1448 Prehearing Interview, Exhibit 4: W-1449 ADH Waiver)
9. The Defendant's address at the time of the trafficking was █. (Exhibit 9: Department's Household Address details screen printout, Exhibit 8: Department's Case Search/Summary printout)
10. The Defendant's address as of the hearing date is █ (Department's Testimony)
11. The FNS report on █ confirms the Defendant would have been unable to purchase high dollar amounts, multiple transactions and transactions within seconds of each other as the store has only one EBT point of sale device, no optical scanners, no shopping baskets or carts and empty/broken/unused coolers/freezers. The most expensive item in the store is pizza and sandwich steaks. (Summary, Exhibit 13: FNS General Store Information report, Department's Testimony)

12. On four dates (█-18, █18, █-18, █-19) the Defendant had multiple transactions within less than 30 seconds of each other. (Exhibit 5, Department's Testimony)
13. On █ 2019, the Department sent to the Defendant an appointment letter to meet with him regarding allegations of fraud regarding past DSS benefits. The letter instructed the Defendant to call the Investigator by █-19 if he wanted to schedule an appointment. Attached to the letter was a W-1449 ADH Waiver form stating that he received \$518.37 in SNAP benefits to which he was not entitled during the period of █, 2018 – █ 2019. The Department proposed to recover the overpayment and to disqualify the Defendant for a period of 12 months due to his intentional program violation of SNAP trafficking. (Exhibit 3: Form W-1448 Prehearing Interview, Exhibit 4: Form W-1449 ADH Waiver)
14. The Department sent the appointment letter to █
█ (Exhibit 2)
15. The Defendant did contact the Department by telephone. He requested to proceed with the hearing. (Department's Testimony)
16. The Defendant did not sign and return the waiver form. (Summary, Department's Testimony)
17. The Defendant has no prior IPV's of the SNAP program. (Exhibit 6: USDA printout, Department's Testimony)
18. Title 7, Code of Federal Regulations ("C.F.R.") 273.15 (c) provides that within 60 days of receipt of a request for a SNAP fair hearing, the State agency shall assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision.

On █, 2019 and again on █ 2019, the OLCRAH issued a Notice of Administrative Hearing with an Administrative Disqualification Hearing Fact Sheet to the Defendant, advising him of his rights and the administrative disqualification hearing procedure. This final decision was not due until █ 2019, this decision 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. "The department's uniform policy manual is the equivalent of state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
4. Uniform Policy Manual ("UPM") Section 7050 outlines the Administrative Disqualification Hearing process.
5. 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.
6. OLCRAH sent the Defendant the notice of the ADH via certified mail on [REDACTED], 2019 and [REDACTED], 2019. The U.S. Postal Service confirms the notices signed for at the Defendant's address.
7. The Defendant was not present at the hearing. The Defendant did not show good cause for failing to appear.
8. CFR (Code of Federal Regulations) § 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.
9. UPM Section 7050.30 sets forth disqualification penalties and procedures as a result of an Intentional Program Violation.
10. 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.
11. 7 CFR § 273.16(b) identifies the disqualification penalties as follows:

Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first intentional Program violation, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section;

(ii) For a period of twenty-four months upon the second occasion of any intentional Program violation, except as provided in paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section; and

(iii) Permanently for the third occasion of any intentional Program violation.

12. 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).

13. 7 CFR § 273.16(e)(6) defines the criteria for determining intentional program violation 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 as defined in paragraph (c) of this section.

14. 7 CFR § 273.18(a)(1) defines Claims against households. A recipient claim is an amount owed because of: (i) benefits that are overpaid or (ii) benefits that are trafficked.

15. 7 CFR § 273.18 (a)(4) defines the following are responsible for paying a claim: (i) Each person who was an adult member of the household when the overpayment or trafficking occurred; (ii) A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.

16. 7 CFR § 273.18 (c)(2) defines Trafficking-related claims. Claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by: (1) the individual's admission; (ii) adjudication; or (iii) the documentation that forms the basis for the trafficking determination.

17. The hearing record clearly and convincingly established that the Defendant intentionally committed a violation of the SNAP regulations by engaging in the trafficking of his SNAP benefits for the period of [REDACTED], 2018, through [REDACTED] 2019, for cash or consideration other than eligible food.
18. The Defendant's intentional violation of the SNAP regulations by engaging in the trafficking of his SNAP benefits in exchange for cash or consideration other than eligible food, either directly or indirectly, in complicity or collusion with others, or acting alone constitutes a first offense intentional program violation of the SNAP program.
19. The Department is correct to seek the disqualification of the Defendant from participating in the SNAP program for a period of twelve (12) months.
20. Title 7 CFR § 273.16 (b) (12) provides that even though the individual is disqualified, the household, as defined in § 273.1, is responsible for making restitution for the amount of any overpayment. All intentional Program violation claims must be established and collected in accordance with the procedures set forth in § 273.18.
21. The Department is correct to recover the total amount of the overpayment of \$518.37 by recoupment or billing the Defendant as prescribed by policy.

DECISION

The Defendant is guilty of committing a first offense intentional program violation of the SNAP program.


Miklos Mencseli
Hearing Officer

C: William Carrasquillo, DSS-CFIU, 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, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. 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.