

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

Case ID: ██████████  
Client ID: ██████████  
Request: 145307

**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 one (1) year. The Department alleged that the Defendant committed an Intentional Program Violation ("IPV") because of the Defendant's misrepresentation of his household income. The Department seeks to recover from the Defendant SNAP benefits of \$1,370.00. This is the Defendant's first IPV offense in the SNAP.

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 outlined a Defendant's rights in these proceedings. The Defendant accepted delivery of the ADH notice on ██████████ 2019.

On ██████████ 2019, in accordance with sections 17b-60, 17-61, and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an Administrative Disqualification Hearing. The Defendant was not present at the hearing.

The following individuals were present at the hearing:

Richard Yuskas, Investigator, Department's Representative  
Christopher Turner, Hearing Officer

### **STATEMENT 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] 2017, the Department sent the Appellant a Periodic Report Form ("PRF"). (Exhibit 1: PRF)
2. On [REDACTED] 2017, the Defendant signed his Periodic Report Form ("PRF"). No change in household income was reported on the Defendant's PRF. A Department processing date for the PRF was not provided. (Exhibit 1: PRF; Testimony)
3. On [REDACTED] 2018, the Defendant completed a SNAP redetermination form. No change in household income was reported on the Defendant's redetermination form. (Exhibit 2: SNAP renewal)
4. The Defendant is a household of one. (Exhibit 1; Exhibit 2; Record)
5. The Defendant did not show good cause for failing to appear for the ADH. (Record)
6. The Department's investigator calculated \$1,370.00 in SNAP overpayments for the period of [REDACTED] 2017, through [REDACTED] 2018. The Department's investigator submitted manual computation sheets ("W-1216") using the [REDACTED] 2018 version of the W-1216 (effective period 10/18 – 9/19) for [REDACTED] 2017, [REDACTED] 2018, and [REDACTED] 2018. No other 1216's were offered as evidence. (Exhibit 3: W-1216's; Hearing summary)
7. There is no indication in the hearing record that the Department sent the Defendant a Notice of Prehearing Interview (W-1448) or a Waiver of Disqualification Hearing SNAP Program (W-1449) forms. (Record)
8. The Defendant's case has not been referred for civil or criminal prosecution. (Department's testimony)
9. The Department did not include a copy of the Defendant's wages to support the assertion he was over 130% of the FPL for the SNAP for the period of [REDACTED], 2017, through [REDACTED], 2018. (Record)
10. The Department did not include a copy of the Defendant's SNAP benefit history or SNAP benefit usage to show the Defendant received and accessed the SNAP benefits in question. (Record)

11. The Department did not include a copy of the Defendant's SNAP eDRS history to support the assertion that the Defendant has no prior SNAP IPV penalties. (Record)

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes provides that the Department of Social Services be designated as the state agency for the administration of (7) the Supplemental Nutrition Assistance Program pursuant to the Food and Nutrition Act of 2008.
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.

Title 7 of the Code of Federal Regulations ("C.F.R.") 273.16 (e) provides that the State agency shall conduct administrative disqualification hearings for individuals accused of an Intentional Program Violation ("IPV").

The Department's Uniform Policy Manual ("UPM") 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)).

UPM § 7050 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, disqualified.

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.

**The Defendant did accept delivery of the ADH notice.**

**The Defendant does not have good cause for failing to appear for the ADH.**

3. 7 C.F.R. § 273.16(a)(1) provides that the State agency shall be responsible for investigating any case of alleged intentional Program violation, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction in accordance with the procedures outlined in this section. Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of Intentional Program Violation as defined in paragraph (c) of this section. If the State agency does not

initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional Program violation, the State agency shall take action to collect the overissuance by establishing an inadvertent household error claim against the household in accordance with the procedures in § 273.18. The State agency should conduct administrative disqualification hearings in cases in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system, in cases previously referred for prosecution that were declined by the appropriate legal authority, and in previously referred cases where no action was taken within a reasonable period of time and the referral was formally withdrawn by the State agency. The State agency shall not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction if the factual issues of the case arise out of the same or related circumstances. The State agency may initiate administrative disqualification procedures or refer a case for prosecution regardless of the current eligibility of the individual.

**The Defendant's case has not been referred for civil or criminal prosecution.**

4. 7 C.F.R. § 273.16(a)(3) provides that the State agency shall base administrative disqualifications for Intentional Program Violations on the determinations of hearing authorities arrived at through administrative disqualification hearings in accordance with paragraph (e) of this section or on determinations reached by courts of appropriate jurisdiction in accordance with paragraph (g) of this section. However, any State agency has the option of allowing the accused individual either to waive their rights to administrative disqualification hearings in accordance with paragraph (f) of this section or to sign disqualification consent agreements for cases of deferred adjudication in accordance with paragraph (h) of this section. Any State agency which chooses either of these options may base administrative disqualifications for Intentional Program Violation on the waived right to an administrative disqualification hearing or on the signed disqualification consent agreement in cases of deferred adjudication.

UPM § 7050.15 (A) provides an individual has the option to waive his or her right to an Administrative Disqualification Hearing.

UPM § 7050.15 (B) indicates in relevant part the Department provides the individual with a waiver form to waive his or her right to the Administrative Disqualification Hearing. The form includes the following: 1. the date by which the waiver must be signed by the individual and received by the Department to avoid holding the hearing; 2. a statement that the head of the assistance unit must also sign the waiver if this person is not the individual being investigated; 3. a statement of the right of the individual to remain silent and avoid self-incrimination; 4. an option to select admission or denial of guilt; 5. a place for the signature of the individual; 7. the fact that the waiver will result in disqualification of the individual and in reduced benefits for the remaining assistance unit, even if the individual does not admit guilt.

UPM § 7050.15 (C) provides a waiving of the right to an Administrative Disqualification Hearing by the individual, regardless of whether or not the waiver form indicates an admission of guilt, results in the same penalties as would be imposed in the event of a determination of guilt by an Administrative Disqualification Hearing or a court of law.

**The Defendant did not sign and return a disqualification consent agreement. There is no indication in the case record that the Department sent the Defendant a consent agreement for his review.**

5. 7 C.F.R. § 273.16 (c) defines an IPV as follows: For purposes of determining through administrative disqualification hearings whether or not a person has committed an IPV, IPV's 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).

7 C.F.R. § 273.16 (e) (6) provides that 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.

UPM § 7050.30 (A) (1) provides an individual is disqualified from participating in the AFDC or Food Stamp program if: a. a court determines that he or she is guilty of intentional recipient error or grants the individual accelerated rehabilitation; or b. a determination of an intentional recipient error is made by an Administrative Disqualification Hearing official; or c. the individual signs a waiver of rights to an Administrative Disqualification Hearing

**The Department failed to establish, clearly and convincingly, that the Defendant intended to commit and committed a first offense IPV due to making a false and misleading statement by misrepresenting, concealing, and withholding facts concerning his wages.**

6. 7 C.F.R. § 273.16(b)(1)(i) provides that 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; 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.

7 C.F.R. § 273.16 (b) (5) provides for disqualification penalties and states that individuals found to committed an IPV shall be ineligible to participate in the program for a period of twelve months for the first IPV, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section.

7 C.F.R. § 273.16(e)(8)(i) provides that if the hearing authority rules that the individual has committed an intentional program violation, the household member must be disqualified in accordance with the disqualification periods and procedure in paragraph (b) of this section. The same act of intention Program violation repeated over a period must not be separated so that separate penalties can be imposed.

7 C.F.R. § 273.16(e)(9)(iv) provides for the *Notification of hearing decision*. (i) If the hearing official finds that the household member did not commit intentional Program violation, the State agency shall provide a written notice which informs the household member of the decision.

7 C.F.R. § 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 any overpayment. All IPV claims must be established and collected in accordance with the procedures set forth in § 273.18.

7 C.F.R. § 273.18 (a) provides that a claim for overpaid benefits represents a Federal debt and that the State agency must develop an adequate plan for establishing and collecting claims.

7 C.F.R. § 273.18(a)(4)(i) provides that the following are responsible for paying a claim: each person who was an adult member of the household when the overpayment or trafficking occurred.

UPM § 7045.05(A)(1) provides that the Department recoups from the assistance unit which received the overpayment.

UPM § 7050.30 (B) (2) discusses disqualification penalties because of an IPV and provides that for a first offense, the length of disqualification is one year.

UPM § 7050.30 (C) (1) provides an individual participating in the AFDC and/or Food Stamp program at the time of the finding of intentional recipient error is disqualified from participation effective: a. the date specified by the court order; or b. no later than 45 days from the court order if the court does not specify the date; or c. the month following the month the written notification of the Administrative Disqualification Hearing decision is mailed to the individual.

The Defendant is not guilty of committing an IPV. The Department is incorrect to seek the disqualification of the Defendant from participating in the SNAP program for one year. As a result, the Department is prohibited from seeking recoupment of \$1,370.00 in SNAP benefits from the Defendant. The Department is not correct to recover the amount of \$1,370.00 overpayment of SNAP benefits that the Defendant received for the period of [REDACTED] 2017, through [REDACTED], 2018, because the evidence submitted by the Department does not prove clearly and convincingly that the Defendant made a false or misleading statement, or misrepresented, concealed, or withheld facts concerning his employment.

7. 7 C.F.R. § 273.16(e)(2) (iv) provides that within 90 days of the date the household member is notified in writing that a State or local hearing initiated by the State agency has been scheduled, the State agency shall conduct the hearing, arrive at a decision and notify the household member and local agency of the decision. The household member or representative is entitled to a postponement of the scheduled hearing if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of 30 days and the State agency may limit the number of postponements to one. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

The issuance of this decision is timely as defined in 7 C.F.R. § 273.16. The Department notified the Appellant on [REDACTED] 2019, and held the administrative hearing on [REDACTED] 2019. This decision, therefore, was due no later than [REDACTED] 2019.

#### DECISION

The Department's appeal is denied.



Christopher Turner  
Hearing Officer

Cc: <mailto:OLCRAH.QA.DSS@ct.gov>

Richard Yuskas, Social Services Investigator, DSS 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 06105-3725. 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.