

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 #142701

Client ID ██████████

Case 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 one (1) year. The Department alleged that the Defendant committed an Intentional Program Violation (“IPV”) by trafficking his SNAP benefits. The Department also alleged it had a claim to recover \$172.03 in SNAP benefits trafficked by the Defendant during the commission of the IPV. The Defendant has not had any prior IPV offenses in the SNAP program.

On ██████████ 2019, the Department requested that an ADH be scheduled, alleging the Defendant committed the violation of “Selling SNAP benefits for cash”.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) scheduled the ADH for ██████████ 2019 and issued notification to the Defendant via certified mail of the initiation of the ADH process. The notification outlined a Defendant’s rights in these proceedings, and included a List of Legal Services in Connecticut.

The USPS left notice of the certified mail on ██████████, 2019, but could not complete delivery because no authorized recipient was available.

On [REDACTED] 2019, after the certified mail was declared undeliverable, OLCRAH sent the ADH information to the Defendant's address via first class mail.

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 following individuals were present at the hearing:

Danielle Morrison, Social Services Investigator for the Department
James Hinckley, Hearing Officer

The Defendant was not present at the hearing.

STATEMENT OF THE ISSUE

1. The first issue to be decided is whether the Defendant is guilty of committing an IPV in the SNAP program by trafficking his benefits, and should be disqualified from the program as a result of the violation.
2. The second issue to be decided is whether the Department has a claim to recover \$172.03 in trafficked SNAP benefits that resulted from the Defendant's commission of the IPV.

FINDINGS OF FACT

1. The Defendant is a 51 year old man who receives a monthly SNAP award of \$192.00. (Hearing Record)

Concerning the investigation

2. On [REDACTED], 2019, an anonymous complaint was called in to the Department's Fraud Hotline that alleged that the Defendant was "selling his food stamps for drugs". The complaint was referred to an investigator for follow-up. (Hearing Record)
3. On [REDACTED], 2019, the assigned investigator reviewed computer records of the Defendant's SNAP Electronic Benefit Transfer (EBT) transactions for the period from [REDACTED] 2018 to [REDACTED], 2019, to look for suspicious activity. (Hearing Record, Ms. Morrison's testimony)
4. The investigator selected three transactions from the Defendant's EBT transaction history for additional scrutiny. The three transactions, dated [REDACTED], 2018, [REDACTED], 2018 and [REDACTED] 2019 ("the three

transactions” or the “first”, “second” and “third” transaction), all took place at a local outlet of a national wholesale shopping club (the “wholesale club”). (Hearing Record, Ms. Morrison’s testimony)

5. The investigator selected the three transactions for two reasons: First, her past experience has been that the second party in a trafficking scheme is often the owner of a small grocery store or bodega – store owners may purchase SNAP benefits at a discount, then use the benefits for bulk purchases of items that can be re-sold at retail; wholesale clubs sell the types and quantities of items appropriate for such a scheme. Second, the particular wholesale club where the transactions occurred is known for being generally cooperative with Department investigations, and for being responsive to Department subpoenas. (Ms. Morrison’s testimony)
6. On [REDACTED], 2019, the investigator sent a subpoena to the headquarters of the wholesale club for the production of the relevant transaction records and membership information. (Ex. 5: Subpoena Duces Tecum, Ms. Morrison’s testimony)
7. On [REDACTED] 2019, the wholesale club sent the Department information that was responsive to its subpoena. (Ex. 6: Store records sent in response to subpoena)
8. No photographic or video surveillance footage was included in the information provided by the wholesale club, as it was not available. (Ms. Morrison’s testimony, Ex. 6)
9. The wholesale club is a membership club, and the member card used for the three transactions being investigated was in the name of two individuals, neither of whom was the Defendant. The last name of one of the club members was the same as the Defendant’s landlord/roommate. (Ex. 6, Hearing Record)
10. The Defendant does not have a designated Authorized Representative or Authorized Shopper listed for his case/EBT card. (Hearing Summary)
11. The first transaction involved \$69.65 in SNAP benefits, the second transaction involved \$14.14 in SNAP benefits and the third transaction involved \$88.24 in SNAP benefits. (Ex. 6, Ex. 7: EBT Transaction Detail)
12. The investigator noted that the first transaction and the third transaction both involved the purchase of Meow Mix cat food, which is not a SNAP eligible purchase, and that the balances due on the first and third transactions were paid using a Discover Card. (Ex. 6, Ms. Morrison’s testimony)

13. The three transactions included the purchase of twenty-five SNAP-eligible items in total (Meow Mix and Glad bags excluded from count) at an average cost per item of \$6.88 (\$172.03/25). (Ex. 6)
14. The cash register receipt description of some of the purchased items included "ROMATOMATO.", "RED.GRAPE 3", "WF MAC APPLE", "ORG RASPBERRY", "BLUBERRY 18Z", "MOTT GR SMTH", "WF TRK MB", "GUAC MINIS", "WF 5 DZ EGG", "HNYCRSP APPL", "BROC/CHDR SP", "6 PK BAGELS", "PRE WF HNY H", "PRE WF TRKY", "ROAST.BEEF", "LOL WHT 72", "128Z 1% MILK", "READY SNAX", "CAULICRACKER", "CLASSICO-SCE", "WF ITLIAN MB", and "WF TORT". (Ex. 6)
15. On [REDACTED] 2019, the Department sent the Defendant a letter asking him to contact the investigator about a matter of importance that had arisen regarding his benefits. (Ex. 15: Request for Contact)
16. On [REDACTED], 2019, the Defendant called the investigator and set up an appointment for [REDACTED], 2019. (Hearing Summary)
17. On [REDACTED], 2019, the Defendant met with two investigators and answered their questions.

At the [REDACTED], 2019 meeting with the two Department investigators, the Defendant:

18. Confirmed that he was still living at the address where he had lived for the past four years, and that he still lived with his landlord, whose last name matched the last name of the member of the wholesale club where his EBT card was used. (Hearing Summary)
19. Reported that he did not own a car, did not possess any major credit card, and owned a small dog but did not own a cat. When asked about the locations where he normally shopped, he did not mention the wholesale club. (Hearing Summary)
20. Denied to the investigators that he ever sold or traded his SNAP benefits for cash. (Hearing Summary)
21. Reported that he has allowed his landlord and his daughter to use his EBT card on different occasions. (Hearing Summary)
22. At the [REDACTED], 2019 meeting, the investigators advised the Defendant "that no one other than himself is authorized to use the card and based on the evidence we have determined that an Intentional Program Violation has occurred and that he is liable to pay the \$172.03 back to the Department, in

addition to being disqualified from the SNAP program for one year.” (Hearing Summary)

23. At the [REDACTED], 2019 meeting, the Defendant signed a sworn (but not notarized) attestation under penalty of false statement as provided for in the CT Penal Code (Conn. Gen. Stat. Section 53a-157b) that was witnessed by the two investigators; the attestation read, “I [REDACTED] have never sell food stamp for any monetary reasons” (Ex. 13: Sworn Statement)

24. At the conclusion of his meeting with the investigators, the Defendant declined to sign a waiver of his right to an administrative disqualification hearing, and asked to proceed with an ADH. (Hearing Summary)

Other Relevant Facts:

25. The Department presented no evidence that the Defendant’s landlord/roommate is a retail store owner. (Hearing Record)

26. The total monthly purchases at the wholesale club of \$69.65 in [REDACTED] 2018, \$14.14 in [REDACTED] 2018, and \$88.24 in [REDACTED], 2019, did not make up a particularly large percentage of the Defendant’s \$192.00 monthly benefit. (Hearing Record)

27. The purchases were for varied items consistent with a normal diet. Items such as apple sauce, a package of six bagels, sliced honey ham and turkey, Italian meatballs, spaghetti sauce and a single gallon of milk, costing an average of \$6.88 per item, are not suggestive of purchases made for the purpose of trafficking. (Hearing Record)

28. The Defendant has had no prior IPV’s in the SNAP program. (Ex. 4: eDRS (Electronic Disqualified Recipient System) query with no results)

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”) section 273.16(a)(1) provides, in pertinent part, as follows:

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....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...

4. "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..." 7 CFR § 273.16(a)(3)

5. 7 CFR § 273.16(e)(3)(i) provides, in pertinent part, as follows:

The State agency shall provide written notice to the individual suspected of committing an intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. If mailed, the notice shall be sent either by first class mail or certified mail-return receipt requested. The notice may also be provided by any other reliable method. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held.

6. 7 CFR § 273.16(e)(4) provides, in pertinent part, as follows:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence....

7. **The ADH was held in accordance with the requirements outlined in 7 CFR § 273.16(e), including the requirement that the Defendant be sent proper notice of the ADH at least 30 days in advance of the hearing. OLCRAH sent notice to the Defendant via certified mail more than 30 days in advance of the hearing. After the USPS declared the certified mail undeliverable, notice was sent to the Defendant via first class mail. When the Defendant failed to appear at the ADH, the hearing was authorized to be held without him present.**

8. "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, intentional Program violation as defined in paragraph (c) of this section.” 7 CFR § 273.16(e)(6)

9. 7 CFR § 273.16(c) provides as follows:

Definition of 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 SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards.

10. 7 CFR § 271.2 provides that the definition of *Trafficking* is as follows:

- (1) 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;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product, and intentionally returning the container for the deposit amount;
- (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
- (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
- (6) Attempting to buy, sell, steal, or otherwise affect 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 signatures, for cash or

consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

11. The Department has not proven with clear and convincing evidence that the Defendant committed, and intended to commit, an Intentional Program Violation. The transactions alleged to be trafficking are consistent with the proper use of SNAP benefits. The Department has not proven with clear and convincing evidence that the Defendant committed any other violation of SNAP regulations, intentional or otherwise, that could potentially constitute an IPV.

12.7 CFR § 273.16 (b)(1) provides, in pertinent part, 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....

13. The Defendant is not subject to disqualification or ineligibility for the SNAP program, because he is *not guilty* of having committed an IPV.

14.7 CFR §271.4 and § 273.18 provide for the authority of State agencies to establish claims to recover fraudulent overissuances of SNAP to participating households, including for benefits that were trafficked resulting from an individual committing an IPV.

15. The Department does not have a claim to recover \$172.03 alleged to have been trafficked by the Defendant, because the benefits were not trafficked, and the Appellant did not commit an IPV.

DISCUSSION

At the outset, I think it is important to try to disentangle what were two separate questions decided by this hearing. The first was whether the Defendant committed the offence alleged in the anonymous complaint which, if true, would have been an IPV. The second was to assess the Department's position that, by simply allowing another individual access to his EBT card and benefits, the Defendant committed a trafficking IPV.

The anonymous complaint was that the Defendant sold his SNAP for drugs; such activity would certainly constitute trafficking. The Department did not have to prove, specifically, that the Defendant sold his SNAP for drugs, but did have

to show clear and convincing evidence that the benefits were trafficked. For the reasons outlined in the findings and conclusions above, the Department did not prove its case. The transactions bore none of the hallmarks of trafficking. They did not involve a retailer, they were not in particularly large amounts, and they were not for items that might be considered suspicious, for example, cases of energy drink. They were for applesauce, meatballs, bagels and sliced meats for sandwiches – items typical of a normal diet.

There is ample evidence that someone other than the Defendant used his EBT card for the purchases at the wholesale club – the Defendant is not a member of the wholesale club, does not own a car, does not have a cat, and does not possess a Discover Card. In the Department's view, if the Defendant allowed an individual not formally designated as his representative to use his benefits, then he committed an IPV. While there is clear and convincing evidence that the Defendant did so, I do not accept that such activity constitutes trafficking, or any other type of IPV.

Passage of the 2008 Farm Bill expanded the definition of trafficking to include benefit abuses not specifically addressed previously. FNS provided analysis of the regulatory changes incorporating the new definition in a final rule published in Vol. 78 of the Federal Register on February 21, 2013, item No. 35. Final rules are regulatory documents having general applicability and legal effect. In its discussion of trafficking within the broader context of SNAP IPVs, FNS's analysis in the final rule provides information helpful in addressing the issues of this hearing.

First, FNS notes that "Throughout the Program's history, trafficking has been defined as ****the exchange of SNAP benefits for cash or consideration other than food****". The revised definition of trafficking, codified in 7 CFR § 271.2, newly includes, among other Program abuses, violations including the purchase of products in returnable containers for the sole purpose of cashing in the deposits, and a prohibition not just against selling SNAP benefits, but also *the food purchased with them*. However, FNS notes, regarding the IPV regulation in 7 CFR 273.16, that it is intended to target rules violations that are "egregious and intentional".

While the revised definition of trafficking is more expansive than the old one, it still does not include any misuse of benefits that does not involve a type of "exchange". FNS notes that buying products for the container deposit, or selling food purchased with SNAP, are both types of "indirect" exchanges. The Department did not provide any evidence that the Defendant exchanged his benefits for cash or other payment, but alleged that his actions constituted trafficking anyway.

The Department advised the Defendant that “no one other than himself is authorized to use the card”, and that, because he allowed such use, he committed an IPV.

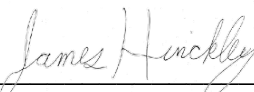
7 CFR § 274.7(a) provides that SNAP benefits “may be used only by the household, *or other person the household selects*, to purchase eligible food for the household...” (Emphasis added)

The Department made much of the fact that the Defendant’s roommate was not officially designated as his “Authorized Shopper”. This made him, in their view, not authorized to use his benefits. If there is any confusion about what the language in 7 CFR § 274.7(a) means, FNS’s analysis is again helpful in providing clarification. In the February 21, 2013 final rule FNS states, “clients are responsible for ensuring that anyone who is freely given access to their SNAP benefits, whether a household member, formally recognized authorized representative *or informal authorized representative*, uses those benefits appropriately....*The Department acknowledges that giving a non-household member access to EBT benefits for purposes of assisting the household with shopping activities is not trafficking...*” (Emphasis added)

The most likely scenario explaining the facts of this case is that the Defendant, every month or so, asked his roommate to perform some shopping for him. The Defendant had no transportation and was not a member of the wholesale club, so he could not purchase the foods sold there unless he was granted a favor by someone who was a member. Such activity is not trafficking.

DECISION

1. The Defendant is **NOT GUILTY** of committing an IPV in the SNAP program.
2. The Department has no claim to recover any SNAP benefits issued to the Defendant.



James Hinckley
Hearing Officer

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.