

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

[REDACTED] 2022
SIGNATURE CONFIRMATION

CASE # [REDACTED]
CLIENT# [REDACTED]
REQUEST# [REDACTED]

**ADMINISTRATIVE DISQUALIFICATION HEARING
NOTICE OF DECISION
PARTY**

[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2022, the Department of Social Services (the "Department") requested an Administrative Disqualification Hearing ("ADH") to seek disqualification of [REDACTED] (the "Defendant") from participating in the Supplemental Nutrition Assistance Program ("SNAP") program for a period of twelve (12) months. The Department alleged that the Defendant committed an Intentional Program Violation ("IPV") by trafficking her SNAP benefits. The Department further seeks to recover the overpaid SNAP benefits in the amount of \$220.09.

On [REDACTED] 2022, 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 scheduled the administrative hearing for [REDACTED] 2022. The notification also outlined a Defendant's rights in these proceedings.

The Defendant did not sign for the certified mail, however, she stated during the opening remarks that she had received and reviewed a copy of the hearing summary and attachments prior to the hearing.

On [REDACTED] 2022, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing.

The following individuals were present at the hearing:

Defendant, [REDACTED]
Department's Representative/Social Services Investigator, Catherine Scillia
Hearing Officer, Joshua Couillard

STATEMENT OF THE ISSUE

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

FINDINGS OF FACT

1. The Defendant is currently receiving SNAP benefits. (Department's Testimony)
2. The Defendant has no previous IPV's. (Exhibit 13: Electronic Disqualification Recipient System ("EDRS") Printout, Department's Testimony)
3. [REDACTED] also known as [REDACTED], is located at [REDACTED] [REDACTED] [REDACTED] is a [REDACTED] square foot store that sells food items such as bread, wheat, tortillas, beef, pork, eggs, canned goods, butter, cheese, milk, vegetables, fruits, juices, chips, baby formula, tobacco products, mobile phone cards, automobile products, health/beauty aids, paper goods, cleaning products and gift items. (Exhibit 10: General Store Information/Photographs)
4. On [REDACTED] 2019, [REDACTED], located at [REDACTED] [REDACTED], was charged with trafficking because a United States Department of Agriculture ("USDA") Food and Nutrition Service ("FNS") analysis of store records and a review of the store's characteristics and food stock established clear and repetitive patterns of unusual, irregular and inexplicable EBT activity between [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. The USDA proposed to permanently disqualify [REDACTED] from participating in the SNAP program. (Exhibit 11: USDA Charge Letter dated [REDACTED] 2019)
5. On [REDACTED] 2021, the USDA upheld its decision to permanently disqualify [REDACTED] [REDACTED] from participating in the SNAP program. [REDACTED] [REDACTED] was permanently disqualified upon receipt of the [REDACTED] 2021, USDA letter. (Exhibit 6: USDA Determination Letter dated [REDACTED] 2021)
6. On [REDACTED] 2022, the Department received notification from the USDA FNS that [REDACTED] was charged with trafficking of SNAP benefits and permanently disqualified from the program. At that time, the Department was made aware that the Defendant's Electronic Bank Transfer ("EBT") card was among multiple clients' EBT cards that met the criteria for EBT trafficking at the [REDACTED] store. (Hearing Record, Exhibit 8: [REDACTED] [REDACTED] EBT Transaction History)

7. On multiple dates the Defendant conducted EBT transactions at [REDACTED] [REDACTED] t, located at [REDACTED]. The table below lists the dates, times and amount of each transaction that occurred.

Date of Transaction	Time of Transaction	Amount of Transaction
[REDACTED] 2019	10:09 am	\$48.20
[REDACTED] 2019	2:53 pm	\$34.89
[REDACTED] 2019	9:26 pm	\$48.00
[REDACTED] 2019	1:37 pm	\$39.00
[REDACTED] 2019	9:15 am	\$40.00
[REDACTED] 2019	12:09 pm	\$10.00

(Exhibit 5: [REDACTED] EBT Transaction History, Exhibit 6: [REDACTED] EBT Transaction History, Exhibit 7: [REDACTED] EBT Transaction History)

8. The total value of the Defendant's questionable transactions that occurred at [REDACTED] [REDACTED] [REDACTED] was \$220.09. These transactions were deemed questionable by the USDA FNS because there were multiple transactions ending with a .00 cent value, as well as two separate transactions that occurred on [REDACTED] [REDACTED] 2019. (Exhibit 5, Exhibit 6, Department's Testimony)
9. The Defendant admits to shopping at [REDACTED] during the period in question but is unaware as to what store personnel were entering into the register for pricing. She would purchase food items for herself and her two children. She did not sign or retain any receipts from her purchases during that time. (Defendant's Testimony)
10. The Defendant's testimony is credible. (Hearing Record)
11. On [REDACTED] 2019, the Defendant reported her EBT card as lost. On [REDACTED] 2019, a new EBT card was issued to the Defendant. Between [REDACTED] 2019 (last transaction at [REDACTED]) and [REDACTED] 2019 (date the card was reported lost), the Defendant completed nine other SNAP transactions using her EBT card. (Exhibit 7, Exhibit 16: Card Replacement History)
12. On [REDACTED] 2019, the Defendant reported her EBT card as lost. On [REDACTED] 2019, a new EBT card was issued to the Defendant. Between [REDACTED] 2019 (last transaction at [REDACTED]) and [REDACTED] 2019 (date the card was reported lost), the Defendant completed eight other SNAP transactions using her EBT card. (Exhibit 7, Exhibit 16)
13. On [REDACTED] 2022, the Department issued the Defendant a W-1448 Notice of Prehearing Interview form for the SNAP program advising her that her EBT transactions had been flagged by a USDA FNS alert and an overpayment of \$220.09 was being established related to the alert. The notice further stated that the Defendant should contact the Department's representative by [REDACTED]

2022, if the Defendant wished to discuss the trafficking charge and subsequent overpayment. (Exhibit 14: W-1448 Notice of Prehearing Interview)

14. On [REDACTED] 2022, the Department issued the Defendant a W-1449 Waiver of Disqualification Hearing form which notified the Defendant that the trafficking IPV caused a \$220.09 overpayment for the period of [REDACTED] through [REDACTED] and listed repayment options. The form also notified the Defendant that the Department proposed a twelve-month disqualification period due to the IPV. (Exhibit 15: W-1449 Waiver of Disqualification Hearing Form)
15. On [REDACTED] 2022, the Defendant signed the W-1449 Waiver of Disqualification Hearing form. She checked off the option that states, "I have read this notice and wish to exercise my right to have an administrative hearing." (Exhibit 15)
16. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 60 days of the request for an administrative hearing. The hearing request was received on [REDACTED] 2022; therefore, this decision is due no later than [REDACTED] 2022.

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 in accordance with federal law.
2. "*Administrative Responsibility*. 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." Title 7 of the Code of Federal Regulations ("C.F.R") § 273.16(a)(1)
3. 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, 177 (1994) (citing Conn. Gen. Stat. 17-3f(c) [now 17b-10]; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A. 2d 712(1990))
4. "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." UPM § 7050.25(D)(3)

The Defendant was present during the ADH. She stated during the hearing's opening remarks that she had received and reviewed a copy of the hearing summary.

5. *“Definitions.* Trafficking means: 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 returning the container for the deposit amount, intentionally 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 intentionally 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. 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.” 7 C.F.R § 271.2
6. *“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.” 7 C.F.R § 273.16(c)
7. *“Disqualification Hearings. Criteria for determining intentional Program violation.* 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 C.F.R § 273.16(e)(6)

The Department incorrectly determined that the Defendant committed a SNAP IPV by trafficking her benefits at [REDACTED]. The Department failed to establish clear and convincing evidence demonstrating that the Defendant committed, and intended to commit, an IPV by trafficking her benefits.

8. *“Disqualification Penalties.* 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 paragraph (b)(2), (b)(3), (b)(4), and (b)(5) of this section.” 7 C.F.R § 273.16(b)(1)(i)

9. “*Length of Disqualification.* If the intentional recipient error occurred on or after [REDACTED] 1984, the length of the disqualification period is determined as follows: When the court order does not specify a period of disqualification, the Department determines the length of the disqualification based upon the individual's previous history of intentional recipient error as follows: for the first offense, the length of disqualification is one year.” UPM § 7050.30(B)(2)(b)(2)(a)

The Department incorrectly determined that the Defendant is subject to a SNAP disqualification penalty for one year given that she is not guilty of committing an IPV due to trafficking violations.

10. “*Disqualification Penalties.* Even though only 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.” 7 C.F.R. § 273.16(b)(12)
11. “*Claims Against Households. General.* A recipient claim is an amount owed because of benefits that are overpaid or benefits that are trafficked. Trafficking is defined in 7 C.F.R. 271.2. This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations. As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections similar to recent national rates of collection. If you do not meet these standards, you must take corrective action to correct any deficiencies in the plan. The following are responsible for paying a claim: Each person who was an adult member of the household when the overpayment or trafficking occurred; A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.” 7 C.F.R. § 273.18(a)
12. “*Types of Claims.* There are three types of claims: (1) An Intentional Program Violation (IPV) claim is any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in § 273.16. (2) An Inadvertent Household Error (IHE) claim is any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household. (3) An Agency Error (AE) claim is any claim for an overpayment caused by an action or failure to take action by the State agency.” 7 C.F.R. § 273.18(b)
13. “In the AFDC and Food Stamp programs 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 from the AFDC and/or Food Stamp programs for a specified amount of time.” UPM § 7050

The Department incorrectly determined the SNAP overpayment claim due to a trafficking IPV. The Department is incorrect to seek the \$220.09 recoupment from the Defendant due to a SNAP trafficking violation.

DISCUSSION

It is a fact, as established at the hearing, that [REDACTED] was permanently disqualified from participating in the SNAP program due to the business trafficking SNAP benefits.

However, the undersigned Hearing Officer does not find a clear pattern of SNAP trafficking committed by the Defendant during the [REDACTED]-month period in question. Only four of the Defendant’s six transactions at [REDACTED] ended in a cent value of .00, and only two transactions occurred on the same day. The Defendant’s admission that she purchased food for her family at [REDACTED] and was unaware of the charges that the store’s staff were entering into the register is credible.

Based on the testimony and evidence provided at the hearing, the undersigned Hearing Officer does not find clear and convincing evidence that the Defendant committed, and intended to commit, an IPV by trafficking her SNAP benefits.

DECISION

The Defendant is found **NOT GUILTY** of committing a first offense IPV of the SNAP program by trafficking her SNAP benefits. She is **NOT disqualified** from the program and the Department **may NOT seek restitution** of \$220.09 from the Defendant.

ORDER

1. Remove the first offense IPV of the SNAP program from the Defendant’s case.
2. Remove the SNAP overpayment of \$220.09.
3. Compliance with the above order is due no later than close-of-business on [REDACTED], 2022.



Joshua Couillard
Fair Hearing Officer

CC: OLCHRAH.QA.DSS@ct.gov

Catherine Scillia, DSS Social Services Investigator

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, 165 Capitol Avenue, 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 her 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.