

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

██████████, 2022
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # 199017

ADMINISTRATIVE DISQUALIFICATION HEARING
NOTICE OF DECISION
PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2022, 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 one (1) year. The Department alleges that the Defendant committed an Intentional Program Violation (“IPV”) because of the Defendant's misrepresentation of his household's composition. The Department seeks to recover the overpaid SNAP benefits of \$338.00 received from ██████████ 2020, through ██████████, 2021. This is the Defendant's first IPV offense in the SNAP program.

On ██████████, 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) notified the Defendant of the initiation of the ADH process via certified mail delivery to his address in Greenwich, CT. The Defendant did not sign for the certified mail per USPS tracking. The ADH hearing package was sent by regular mail on ██████████ 2022, and no return receipt was requested. The notification outlined the Defendant's rights in these proceedings. The ADH was scheduled for ██████████ 2022.

On ██████████ 2022, in accordance with Sections § 17b-88 of the Connecticut General Statutes (“Conn. Gen. Stat.”) and Title 7, § 273.16 of the Code of Federal Regulations (“C.F.R.”) the OLCRAH held an Administrative Disqualification Hearing.

The Defendant did not appear at the hearing and did not request a postponement of the proceedings for good cause.

The following individuals were present at the hearing:

LaShea Hall, Department's Representative
Scott Zuckerman, Hearing Officer

STATEMENT OF THE ISSUE

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

The second issue is whether the Department's proposal to disqualify the Defendant from participating in the SNAP for one year and recover the claimed \$696.00 overpayment is correct.

FINDINGS OF FACT

1. Effective [REDACTED], 2016, the Appellant receives weekly Workers Compensation of \$454.11 from [REDACTED]. (Exhibit 4: Online application, [REDACTED] 2020, and Exhibit 6: Workers Compensation payments, [REDACTED] 2018 through [REDACTED], 2020)
2. On [REDACTED], 2020, the Defendant submitted an online application for SNAP benefits for a household of two, including himself and his son, [REDACTED]. The application indicates [REDACTED] is a student at [REDACTED]. (Exhibit 4: Application, [REDACTED] 2020)
3. On [REDACTED], 2020, the Defendant sent the Department a Copy of his workers compensation payments from [REDACTED], 2018, through [REDACTED], 2020. (Ex. 6: Workers Compensation payments)
4. On [REDACTED] 2020, the Defendant completed the telephone interview with the Department. (Exhibit 5: Case notes)
5. On [REDACTED], 2020, the Department granted the Defendant SNAP benefits of \$16.00 monthly for a household of two effective [REDACTED] 2022. (Ex. 5: Case Notes)
6. On [REDACTED], 2020, the Department issued the Defendant \$32.00 in SNAP benefits for a household of two for the months of [REDACTED] and [REDACTED] 2020. (Exhibit 8: Eligibility Determination Results and Exhibit 9: Benefit Issuance)
7. On [REDACTED] 2020, the Department issued the Defendant \$16.00 in SNAP benefits for a household of two. (Exhibits 8 and 9)
8. On [REDACTED] 2020, the Department issued the Defendant \$16.00 in SNAP benefits

for a household of two. (Exhibits 8 and 9)

9. On [REDACTED], 2020, the Department received the Defendant's Periodic Report Form. The Defendant did not report any changes and indicated [REDACTED] resided with him. The Appellant signed the form which stated, "by signing, I agree that: I have read this entire form including the section about rights and responsibilities, or have had it read to me in a language that I understand, and that I must comply with these rules: The information I am giving is true and complete to the best of my knowledge; I could go to prison or be required to pay fines if I knowingly give wrong or incomplete information; and DSS and other federal, state, and local officials may verify any information I give." (Hearing Summary and Exhibit 7: Periodic Report Form)
10. On [REDACTED] 2020, the Department issued the Defendant \$16.00 in SNAP benefits for a household of two. (Exhibits 8 and 9)
11. On [REDACTED] 2020, the Department issued the Defendant \$16.00 in SNAP benefits for a household of two. (Exhibits 8 and 9)
12. On [REDACTED] 2020, the Department issued the Defendant \$16.00 in SNAP benefits for a household of two. (Exhibits 8 and 9)
13. On [REDACTED] 2020, the Department issued the Defendant \$16.00 in SNAP benefits for a household of two. (Exhibits 8 and 9)
14. On [REDACTED] 2021, the Department issued the Defendant \$16.00 in SNAP benefits for a household of two. (Exhibits 8 and 9)
15. On [REDACTED], 2021, the Department received a fraud hotline complaint from the Defendant's son's mother, [REDACTED]. [REDACTED] indicated she received a notice from the State of [REDACTED] that [REDACTED] medical benefits would be discontinued because he is receiving dual benefits in CT. (Department's testimony; Exhibit 1: Update Referral and Exhibit 13: Letter dated [REDACTED], 2021, from the [REDACTED], Department of Human Services)
16. On [REDACTED] 2021, the Department issued the Defendant \$70.00 in SNAP benefits for a household of two. (Exhibits 8 and 9)
17. On [REDACTED], 2021, the Department contacted the Defendant's son's mother, [REDACTED]. [REDACTED] reported [REDACTED] lived with her his entire life. She provided an email from [REDACTED] in [REDACTED], [REDACTED] verifying his enrollment at the school. The Department removed [REDACTED] from the Defendant's SNAP effective [REDACTED], 2022. (Hearing Summary and Exhibit 12: Email from [REDACTED])
18. On [REDACTED], 2021, the Department issued the Defendant \$70.00 in SNAP benefits for a household of two. (Exhibits 8 and 9)

19. On [REDACTED], 2021, the Department sent the Defendant a Notice of Appointment to his home at [REDACTED] in [REDACTED], CT to discuss the suspected intentional program violation. The Appointment was scheduled on [REDACTED] 2022. The Defendant did not attend the appointment. (Hearing summary and Exhibit 14: Notice of Appointment, [REDACTED] 2021)
20. On [REDACTED] 2022, the Department sent the Defendant a letter requesting he contact the Department by [REDACTED] 2022, to discuss the IPV. There was no contact with the Defendant. (Hearing Summary and Exhibit 15: Request to contact letter, [REDACTED], 2022)
21. On [REDACTED], 2022, the Department mailed the Defendant a W-1449, Waiver of Disqualification Hearing SNAP Program. The Waiver form indicated that because he broke the rules of the SNAP the Department proposes to disqualify him for a period of one year and by signing the waiver he gives up his right to an administrative disqualification hearing. (Exhibit 14: Waiver form)
22. The Department calculated SNAP overpayments due to the Defendant misrepresenting his household composition by his misstatement that his son [REDACTED] resided with him. The overpayments were calculated as follows:

Issuance Month	Received	Entitled	Overpayment
[REDACTED] 2020	\$16.00	\$0.00	\$16.00
[REDACTED] 2020	\$16.00	\$0.00	\$16.00
[REDACTED] 2020	\$16.00	\$0.00	\$16.00
[REDACTED] 2020	\$16.00	\$0.00	\$16.00
[REDACTED] 2020	\$16.00	\$0.00	\$16.00
[REDACTED]	\$16.00	\$0.00	\$16.00
[REDACTED] 2020	\$16.00	\$0.00	\$16.00
[REDACTED]	\$16.00	\$0.00	\$16.00
[REDACTED]	\$70.00	\$0.00	\$70.00
[REDACTED] 2021	\$70.00	\$0.00	\$70.00
[REDACTED] 2021	\$70.00	\$0.00	\$70.00
Total			\$338.00

(Exhibit 10: SNAP computation sheets; Exhibit 11: Pending Overpayment Summary)

23. The Defendant is a current recipient of SNAP benefits. (Department's testimony)
24. The Department is not seeking recovery of the Pandemic issued SNAP benefits. (Department's testimony)
25. The Defendant has no prior SNAP Intentional Program Violation penalties. (Exhibit 17: Electronic Disqualified Recipient System Query)

CONCLUSIONS OF LAW

1. Conn. Gen. Stat. § 17b-2 provides that the Department of Social Services is designated as the state agency for the administration of (7) the supplemental nutrition assistance program pursuant to the Food and Nutrition Act of 2008.

Conn. Gen. Stat. § 17b-88 provides if a beneficiary of assistance under the state supplement program, medical assistance program, aid to families with dependent children program, temporary family assistance program, state-administered general assistance program, food stamp program or supplemental nutrition assistance program receives any award or grant over the amount to which he is entitled under the laws governing eligibility, the Department of Social Services (2) shall take such other action as conforms to federal regulations, including, but not limited to, conducting administrative disqualification hearings for cases involving alleged fraud in the food stamp program, supplemental nutrition assistance program, the aid to families with dependent children program, the temporary family assistance program or the state-administered general assistance program.

7 C.F.R. §273.16 (e) provides that the State agency shall conduct administrative disqualification hearings for individuals accused of an Intentional Program Violation.

The Department has the authority under state statute and federal regulation to initiate and hold Administrative Disqualification Hearings.

2. 7 C.F.R. § 273.16 (a) provides for administrative responsibility. (1) The State agency shall be responsible for investigating any case of an 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.

3. 7 C.F.R. §273.16 (e) (3) provides for the advance notice of the hearing.

(i) 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 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.

(ii) If no proof of receipt is obtained, a timely (as defined in paragraph (e)(4) of this section) showing of nonreceipt by the individual due to circumstances specified by the State agency shall be considered good cause for not appearing at the hearing. Each State agency shall establish the circumstances in which non-receipt constitutes good cause for failure to appear. Such circumstances shall be consistent throughout the State agency.

(iii) The notice shall contain at a minimum: (A) The date, time, and place of the hearing; (B) The charge(s) against the individual; (C) A summary of the evidence, and how and where the evidence can be examined; (D) A warning that the decision will be based solely on the information provided by the State agency if the individual fails to appear at the hearing.

The Defendant did not acknowledge receipt of the ADH notice that included a summary of the Department's charges.

4. 7 C.F.R. §273.16 (e) (4) provides for the scheduling of the hearing. The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional Program violation. 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 officer is required to carefully consider the evidence and determine if an intentional Program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional Program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid, and the State agency shall conduct a new hearing. The hearing officer who originally ruled on the case may conduct the new hearing. In instances where good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice as specified in paragraph (e)(3)(ii) of this section, the household member has 30 days

after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

The Defendant did not have good cause for failing to appear for the ADH scheduled at the [REDACTED] Regional Office.

On [REDACTED] 2022, an ADH packet was sent by regular mail.

5. 7 C.F.R. § 273.1(b)(1) provides for Special household requirements and states that:
 - (1) Required household combinations. The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified. (i) Spouses; (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child must be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.

The Department correctly determined that the Defendant was not eligible for SNAP benefits as a household of two for the period of [REDACTED] 2020 through [REDACTED] 2021. The Defendant misrepresented the facts on his [REDACTED] 2020, application that his minor child was living in his home when in fact he was living with his mother in [REDACTED].

6. 7 C.F.R. § 273.16 (c) provides for the definition of Intentional Program Violation as follows: For purposes of determining through administrative disqualification hearings whether 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 SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking SNAP benefits or EBT cards.

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.

The Defendant's deliberate misstatement concerning his household composition and receipt of SNAP benefits to which he was not entitled constitutes an Intentional Program Violation.

The hearing record clearly and convincingly established that the Defendant intentionally misrepresented, concealed, or withheld facts to the Department that caused him to receive benefits to which he was not eligible.

7. 7 C.F.R. § 273.16 (b) provides for disqualification penalties and indicates (1) 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.

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 intentional Program violation repeated over a period must not be separated so that separate penalties can be imposed.

7 C.F.R. § 273.16 (e) (8) (ii) provides that no further administrative appeal procedure exists after an adverse State level hearing. The determination of an intentional Program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

7 C.F.R. § 273.16 (e) (8) (iii) provides once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

The Department is correct to seek the disqualification of the Defendant from participating in the SNAP for one year.

8. 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 (1) A recipient claim is an amount owed because of: (i) Benefits that are overpaid.

7 C.F.R. § 273.18 (a) (2) provides that 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.

7 C.F.R. § 273.18 (a) (4) provides that 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.

7 C.F.R. § 273.18 (b) provides for types of claims. There are three types of claims: (1) Intentional Program violation (IPV) any claim for an overpayment or trafficking resulting from an individual committing an IPV. (2) Inadvertent household error (“IHE”) defined as any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household; (3) Agency error (“AE”) defined as any claim for an overpayment caused by an action or failure to take action by the State agency.

The Department correctly determined that the overpayment is the result of an IPV.

The Defendant is responsible for making restitution for the overpayment because of being found guilty of an IPV.

9. Title 7 of the Code of Federal Regulations (“CFR”) § 273.9(b)(2)(ii) provides for unearned income and states that annuities; pensions; retirement; veteran’s, or disability benefits; workers or unemployment compensation including any amounts deducted to repay claims for intentional program violations as provided in § 272.12; old age , survivors, or social security benefits; foster care payments for children or adults who are considered members of the household; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

The Department correctly counted the Defendant’s Workers compensations as unearned income.

10. Title 7 of the CFR § 273.10(c)(1)(i) provides for the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the

household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by §273.12.

11. 7 C.F.R. § 273.18 (c) provides for calculating the claim amount—(1) Claims not related to trafficking. (i) As a state agency you must calculate a claim back to at least twelve months prior to when you become aware of the overpayment and or an IPV claim, the claim must be calculated back to the month the act of IPV first occurred and for all claims, don't include any amounts that occurred more than six years before you became aware of the overpayment.

7 C.F.R. § 273.18 (c) (1) (ii) provides for the actual steps in calculating a claim. (A) determine the correct amount of benefits for each month that a household received an overpayment. (C) subtract the correct amount of benefits actually received. The answer is the amount of the overpayment.

The Department incorrectly calculated the overpayment claims by using projected income calculated at the time of certification, rather than obtaining actual workers compensation received by the Defendant for the months of [REDACTED] 2020 through [REDACTED] 2021.

Based on the hearing record, the amount of the overpayment cannot be determined. A comparison of the amount the Appellant received vs the amount of SNAP benefits the Defendant should have received cannot be determined.

12. 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 issuance of this decision is timely as defined in 7 C.F.R. § 273.16 (e) (2) (iv). The Department notified the Appellant on [REDACTED], 2022, and held the administrative hearing on [REDACTED], 2022, with this decision due no later than [REDACTED] 2022.

DECISION

With regard to whether the Defendant committed an Intentional Program Violation under the SNAP, the Defendant is found guilty.

With regard to the Department's request to disqualify the Defendant from SNAP and impose a first offense SNAP penalty for twelve months due to an IPV, the Department's requested is granted.

With regard to the Department's request to recover the overpayment claim of \$338.00 for the period of [REDACTED] 2020, through [REDACTED], 2021, the appeal is remanded back to the Department for further action.

ORDER

1. The Department must request workers compensation payments received from the Defendant's employment at [REDACTED] for the period of [REDACTED] 2020, through [REDACTED], 2022. The Department must recalculate eligibility using the exact amount received in each of the months for the overpayment claim under the IPV beginning [REDACTED] 2020.
2. The Department must issue a corrected notice of the IPV overpayment claim amount to the Defendant.
3. Compliance is due 14 – days from the date of this decision.

Scott Zuckerman
Scott Zuckerman
Hearing Officer

Cc: OLCRAH.QA.DSS@ct.gov

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.