

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

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

Case ID ██████████
Client ID ██████████
Request # 199602

NOTICE OF DECISION

PARTY

██████████
██████████
██████████
████████████████████

PROCEDURAL BACKGROUND

On ██████ ██████ 2022, the Department of Social Services (the "Department") sent ████████████████████ (the "Appellant") a Notice of Action ("NOA") reducing her benefits under the Supplemental Nutrition Assistance Program ("SNAP") effective ██████████ ██████ 2022.

On ██████████ ██████ 2022, the Appellant requested an administrative hearing to contest the Department's decision to impose a penalty under the SNAP, which reduced her benefits and to challenge the validity of the Waiver of Disqualification Hearing SNAP Program document, which she signed on ██████████ ██████ 2022.

On ██████████ ██████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice to the Appellant scheduling the administrative hearing for ██████████ ██████ 2022.

On ██████████ ██████ 2022, the Appellant requested a continuance, which OLCRAH granted. Due to health concerns, the Appellant requested the hearing be held via teleconference, which OLCRAH approved.

On ██████████ ██████ 2022, the OLCRAH issued a notice scheduling the administrative hearing for ██████████ ██████ 2022 to the Appellant and her authorized representative on file with the Department.

On [REDACTED] [REDACTED] 2022, the OLCRAH reissued a notice scheduling the administrative hearing for [REDACTED] [REDACTED] 2022 to the Appellant, the authorized representative on file with the Department, and the Appellant's counsel.

On [REDACTED] [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 via teleconference.

The following individuals called in for the hearing:

[REDACTED], Appellant

[REDACTED], Counsel for the Appellant

[REDACTED] Interpreter for Counsel

Carolyn Jones, Department Representative

Mark Blake, Department Representative

Johanna Santos, Interpreters and Translators, Inc., Interpreter

Lisa Nyren, Fair Hearing Officer

The record remained open for the submission of additional information. On [REDACTED] [REDACTED] 2022, Counsel for the Appellant submitted additional evidence for review. The undersigned received no additional information from the Department. The hearing record closed [REDACTED] [REDACTED] 2022.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly reduced the Appellant's SNAP benefits due to an intentional program violation ("IPV") penalty, effective [REDACTED] [REDACTED] 2022.

A secondary issue is whether the Waiver of Disqualification Hearing SNAP Program document signed by the Appellant on [REDACTED] [REDACTED] 2022 which resulted in an ADH penalty is valid.

FINDINGS OF FACT

1. The Appellant receives SNAP assistance for a household of two: herself and child [REDACTED] [REDACTED] ("child"). (Hearing Record)
2. On [REDACTED] [REDACTED] 2022, the Department issued the Appellant the form W-1448 Notice of Prehearing Interview Food Stamp Program (now known as the SNAP) Spanish version – Aviso De Entrevista Antes De La Audiencia Programa De Cupones Para Alimento ("Form W-1448-S"). The form

states that the Department believes the Appellant intentionally broke the rules of the Food Stamp program. The Department checked off two boxes on the form and indicated the following information:

- “This person is the head of the Food Stamp household” and;
- “There is no overpayment related to this situation.”
- An appointment to meet with the Appellant on [REDACTED] 2022 at the Department’s local Regional Office to discuss the charge.
- Marc Blake (the “Investigator”) is the Department’s worker; and the phone number to reach the Investigator.
- “We have sent a copy of the form to sign if you do not want the hearing. Please bring it with you to the appointment. If you sign the agreement to give up your right to a hearing, you may either admit to the facts or not admit to the facts as presented by the Department. The Department will disqualify you in either case.”
- The due date to sign a waiver as [REDACTED] 2022 or the Department will consider administrative or legal action.

(Exhibit H: Supporting Documents, Appendix 3 & 4)

3. The English version of Form W-1448 language differs from that of the Spanish version W-1448-S issued to the Appellant. Form W-1448 English version writes:
 - “You have the right to remain silent about the charges, and anything you say or sign about the charges can be used against you in a court of law.”

Form W-1448-S issued to the Appellant includes the following sentence:

- “Usted tiene el derecho a quedarse en silencio sobre los cambios y todo lo que usted diga o firme sobre los cambios pueden ser usados en su contra en una corte de leyes”.

The Spanish word “cambios” translates as changes, not charges. (Exhibit H: Supporting Documents, Appendix 3 & 4)

4. On [REDACTED] 2022, the Investigator met with the Appellant in her home. The Investigator communicated with the Appellant using telephone interpreter services. (Hearing Record)
5. On [REDACTED] 2022, the Appellant signed the Waiver of Disqualification Hearing SNAP Program form Spanish version – Renuncia De Audiencia

De Descalificacion Programa SNAP (“W-1449-S”). The following statements/information are included on the form:

- “The Department believes ____ broke the rules of the SNAP program on purpose. ... This person is the head of household.”
- The due date for the W-1449-S form to be signed as [REDACTED] 2022 or the Department will consider administrative action.
- “I understand that the Department of Social Services believes that [the Appellant] caused an intentional program violation in the SNAP program. If I sign this Waiver, I know the Department of Social Services will disqualify the named person from the SNAP program for the following number of months/years: 12 months. I also understand that my household will receive fewer SNAP benefits for that period.”
- “I understand that I may remain silent about this [charge]. I understand that anything I sign or say may be used against me in an administrative or court action.”
- “I understand that by signing below, I give up the right to an administrative disqualification hearing. I understand that any penalty I may be subject to will be the same whether I choose to waive my right to an administrative hearing or choose to have a hearing and am found guilty.”
- The Investigator’s name is not listed. A contact number 860-987-7294 is listed.
- “I may withdraw this waiver by written request within ten days of the date I sign it.”

(Exhibit 5: SNAP Disqualification Waiver Form, Exhibit 7: W1448 Notice of Prehearing Interview and W1449 Waiver of Disqualification SNAP Program, and Exhibit H: Supporting Documents Appendix 6 & 7)

6. Form W-1449-S lists three options:

- A. I knowingly and voluntarily admit to the facts as presented.
- B. I do not admit to the facts as presented by knowingly and voluntarily sign this Waiver and understand that a disqualification penalty will result.
- C. I have read this notice and wish to exercise my right to have an administrative hearing.

On [REDACTED] 2022, the Appellant checked off option A and signed form W-1449-S. (Exhibit H: Supporting Documents Appendix 6 & 7)

7. On [REDACTED] 2022, the Department imposed an IPV penalty against the Appellant, effectively disqualifying the Appellant under the SNAP for a one-year period beginning [REDACTED] 2022. (Exhibit 1: Case Notes, Exhibit 3: Update Referral, and Exhibit 4: Notice of Disqualification)

8. On [REDACTED] [REDACTED] 2022, the Department issued a Notice of Disqualification SNAP to the Appellant. The notice stated in pertinent part, "Because you committed an Intentional Program Violation, you have been disqualified from SNAP and will not be eligible to receive SNAP benefits from [REDACTED]/2022 to [REDACTED]/2023. This disqualification penalty applies nationwide." (Exhibit 4: Notice of Disqualification)
9. On [REDACTED] [REDACTED] 2022, the Appellant submitted a request for an administrative hearing requesting an audit and help with her SNAP benefits for herself and child. (Exhibit 6: Hearing Request)
10. Effective [REDACTED] [REDACTED] 2022, the Department imposed the IPV penalty and reduced the Appellant's SNAP benefits from \$630.00 per month to \$206.00 per month. (Hearing Summary)
11. The Appellant is disabled and receives Supplemental Security Income ("SSI"). The Appellant's medical diagnosis includes trauma, depression, asthma, and prediabetes. The Appellant received special education services through the tenth grade while in school in [REDACTED]. The Appellant speaks Spanish. The Appellant does not speak English. (Appellant's Testimony)
12. The Appellant's child is autistic. The child is subject to seizures and his communication is limited due to speech issues. The child requires more attention due to his medical diagnosis. (Appellant's Testimony)
13. On [REDACTED] [REDACTED] 2022, the Appellant gave birth two weeks early after a high-risk pregnancy. The Appellant's newborn was born with a cleft palate. (Appellant's Testimony)
14. The Appellant did not understand the impact on her SNAP benefits when she signed Form W-1449-S. (Appellant's Testimony)
15. The Appellant seeks the removal of the IPV penalty and a return to full SNAP benefits for herself, her child, and newborn. (Hearing Record)
16. The issuance of this decision is timely under Title 7 Section 273.15(c) of the Code of Federal Regulations, which requires that a decision be issued within 60 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED] [REDACTED] 2022; however, the hearing, which OLCRAH originally scheduled for [REDACTED] [REDACTED] 2022 was rescheduled for [REDACTED] [REDACTED] 2022 at the request of the Appellant, which caused a [REDACTED]-day delay. Additionally, the record which was scheduled to close on [REDACTED] [REDACTED] 2022 did not close until [REDACTED] [REDACTED] 2022 resulting in an additional [REDACTED]-day delay. This [REDACTED]-day delay resulted from the

Appellant's requests; therefore, this decision is due no later than [REDACTED] 2022 and is timely.

CONCLUSIONS OF LAW

1. Section 17b-2(7) of the Connecticut General Statutes provides as follows:

The Department of Social Services is designated as the state agency for the administration of the supplemental nutrition assistance program pursuant to the Food and Nutrition Act of 2008.

2. Title 7 Section 273.15(a) of the Code of Federal Regulations ("C.F.R.") provides as follows:

Except as provided in § 271.7(f), each State agency shall provide a fair hearing to any household aggrieved by an action of the State agency which affects the participation of the household in the Program.

"The hearing official shall: insure that all relevant issues are considered."
7 C.F.R. § 273.15(m)(2)(ii)

"The department's uniform policy manual is the equivalent of a 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))

Section 1570.25(C)(2)(c) of the Uniform Policy Manual provides as follows: "The Fair Hearing official determines the issue of the hearing."

The OLCRAH has the authority to conduct a fair hearing and determine the issue(s) of the hearing.

3. Federal regulation provides as follows:

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 accused individuals 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.

7 C.F.R. § 273.16(a)(3)

4. Federal regulation provides as follows:

Each State agency shall have the option of establishing procedures to allow accused individuals to waive their rights to an administrative disqualification hearing. For State agencies which choose the option of allowing individuals to waive their rights to an administrative disqualification hearing, the procedures shall confirm with the requirements outlined in this section.

1. Advance notification.

- i. The State agency shall provide written notification to the household member suspected of intentional Program violation that the member can waive his/her right to an administrative disqualification hearing. Prior to providing this written notification to the household member, the State agency shall ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual's household and a decision is obtained that such evidence warrants scheduling a disqualification hearing.
- ii. The written notification provided to the household member which informs him/her of the possibility of waiving the administrative disqualification hearing shall include, at a minimum:
 - A. The date that the signed waiver must be received by the State agency to avoid the holding of a hearing and a signature block for the accused individual, along with a statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriately designated signature block;
 - B. A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law
 - C. The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the State agency;
 - D. An opportunity for the accused individual to specify whether or not he/she admits to the facts as presented by the State

agency. This opportunity shall consist of the following statements, or statements developed by the State agency which have the same effect, and a method for the individual to designate his/her choice:

1. I admit to the facts as presented, and understand that a disqualification penalty will be imposed if I sign this waiver; and
 2. I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result;
 - E. The telephone number and, if possible, the name of the person to contact for additional information; and
 - F. The Fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.
- iii. The State agency shall develop a waiver of right to an administrative disqualification hearing form which contains the information required by this section as well as the information described in [paragraph \(e\)\(3\)](#) of this section for advance notice of a hearing. However, if the household member is notified of the possibility of waiving his/her right to an administrative disqualification hearing before the State agency has scheduled a hearing, the State agency is not required to notify the household member of the date, time and place of the hearing at that point as required by [paragraph \(e\)\(3\)\(i\)\(A\)](#) of this section.

7 C.F.R. § 273.16(f)(1)

5. Federal regulation provides as follows:

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 information provided by the State agency if the individual fails to appear at the hearing;
- E. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
- F. A warning that a determination of intentional Program violation will result in disqualification periods as determined by [paragraph \(b\)](#) of this section, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

- G. A listing of the individual's rights as contained in [§ 273.15\(p\)](#);
- H. A statement that the hearing does not preclude the State or Federal Government from prosecuting the individual for the intentional Program violation in a civil or criminal court action, or from collecting any overissuance(s); and
- I. If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

7 C.F.R. § 273.16(e)(3)(iii)

6. Federal regulation provides as follows:

The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

1. Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the State agency to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the State agency shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.
2. Present the case or have it presented by a legal counsel or other person.
3. Bring witnesses.
4. Advance arguments without undue interference.
5. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
6. Submit evidence to establish all pertinent facts and circumstances in the case.

7 C.F.R. § 273.15(p)

The Department failed to comply with federal regulations, which allow an accused individual to waive their rights to an administrative

disqualification hearing as governed under 7 C.F.R. § 273.16(f), 7 C.F.R. § 273.16(e)(3), and 7 C.F.R § 273.15(p).

Under 7 C.F.R. § 273.16(f), the Department issued forms W-1448-S and W-1449-S to the Appellant correctly providing written notification of her right to an administrative disqualification hearing and the possibility of waiving such hearing.

The Department included the due date the signed waiver should be returned to avoid the holding of a hearing and a signature block.

The Department incorrectly excluded a statement of the accused individuals' right to remain silent concerning the charges on Form W-1448-S. The Spanish translation for "charges" is translated as "changes," resulting in the difference between the Spanish version and English version of Form W-1448.

Although the Department correctly lists the fact that a waiver of the disqualification hearing will result in disqualification even if the accused individual does not admit to the facts as presented by the State agency, based on the hearing record, the facts of the charges cannot be determined.

Whether the Department allowed the Appellant an opportunity during the ██████████ 2022 home visit to specify whether or not she admits to the facts as presented by the Department cannot be determined.

However, Form W-1449-S includes the following statements: "I understand that by signing below, I give up the right to an administrative disqualification hearing. I knowingly and voluntarily admit to the facts as presented. I do not admit to the facts as presented by knowingly and voluntarily sign this Waiver and understand that a disqualification penalty will result."

The Department incorrectly excluded the name of the Investigator on Form W-1449-S but correctly included a telephone number on such form as required under federal regulations. Form W-1448-S correctly includes the Investigator name and telephone number.

The Department failed to comply with 7 C.F.R. § 273.16(e)(3) which includes additional notification of waiver of disqualification requirements. Forms W-1448-S and W-1449-S fail to list the following as required: charge against the Appellant, a summary of the evidence, how and where such evidence can be examined, a warning that the decision will be based solely on information provided by the State agency if the individual fails to appear at the ADH with a 10-day

provision to provide good cause for failure to appear, and the failure to list the individual's rights as contained in § 273.15(p).

The Department correctly included a statement of penalty, specifically 12 months and the possibility the case may be transferred to the court system. Additionally, the phone number for free legal services is correctly provided.

Under 7 CFR 273.15(p), federal regulation provides for an opportunity to review all documents and records. Based on the hearing record, whether the Appellant was provided with such an opportunity at the [REDACTED] 2022 appointment with the Department cannot be determined. Additionally, the hearing record is void of any documentation the Department provided the Appellant with an opportunity to present the case, bring witnesses, advance arguments without undue interference, question or refute any testimony or evidence and provide evidence to establish the facts and circumstances of the case. Although the Department provided a Spanish interpreter via telephone at the [REDACTED] 2022 home visit, whether the Department considered the impact of the Appellant's disability, mental health, and high risk pregnancy at the time of the home visit cannot be established. Omission of due process rights and information and evidence regarding the charges fails to provide an accused individual with the necessary information to make an informed decision whether or not to sign the waiver.

The Department failed to comply with federal regulations which govern the procedures State agencies must follow to allow an accused individual to waive their rights to an administrative disqualification hearing rendering the Waiver of Disqualification Hearing Snap Program, Form W-1449-S invalid.

7. Federal regulation provides as follows:

If the household member suspected of intentional Program violation signs the waiver of right to an administrative disqualification hearing and the signed waiver is received within the timeframes specified by the State agency, the household member shall be disqualified in accordance with the disqualification periods specified in [paragraph \(b\)](#) of this section. The period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification. However, if the act of intentional Program violation which led to the disqualification occurred prior to the written notification of the disqualification periods specified in [paragraph \(b\)](#) of this section, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of

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

7 CFR 273.16(f)(2)(i)

Federal regulation provides as follows:

No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed 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 CFR 273.16(f)(2)(ii)

Federal regulation provides as follows:

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.

7 CFR 273.16(f)(2)(iii)

On [REDACTED] 2022, the Department incorrectly imposed an IPV Penalty against the Appellant effectively reducing her SNAP benefits. The Department failed to comply with federal regulations governing the ADH process making Form W-1449-S signed by the Appellant invalid and the resulting SNAP IPV penalty invalid.

Although federal regulations state the disqualification penalty cannot be changed by a subsequent fair hearing decision, this hearing decision addresses the validity of the waiver signed by the Appellant. As the Department failed to adhere to ADH waiver procedures under federal regulations, the result nullifies Form W-1449-S signed on [REDACTED] 2022 and the resulting IPV penalty.

DECISION

The Appellant's appeal is **GRANTED**.

ORDER

1. The Department must void Form W-1449-S signed by the Appellant on [REDACTED] [REDACTED] 2022, which resulted in an IPV and the Appellant's disqualification under the SNAP for 12 months.
2. The Department must remove the IPV penalty imposed on the Appellant's SNAP benefits effective [REDACTED] [REDACTED] 2022 and issue any benefits due.
3. Compliance is due 10 days from the date of this decision.

Lisa A. Nyren
Lisa A. Nyren
Fair Hearing Officer

CC: Josephine Savastra, SSOM RO #10
Lindsey Collins, SSOM RO #10
Wilfredo Medina, FHL Supervisor RO #10
Carolyn Jones, FHL RO #10
Mark Blake, Investigator RO #10

[REDACTED] [REDACTED]
[REDACTED]

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within **25** days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on § 4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105.

RIGHT TO APPEAL

The appellant 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, 165 Capitol Avenue, 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 the Commissioner's 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 appellant resides.