

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

████████████████████
Signature Confirmation

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

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████, the Department of Social Services (the “Department”) requested an Administrative Disqualification Hearing (“ADH”) to seek disqualification of ██████████ (the “Defendant”) from participation in the Supplemental Nutrition Assistance Program (“SNAP”) for twelve (12) months. The Department alleges that the Defendant committed an Intentional Program Violation (“IPV”) by using an Electronic Benefit Transfer (“EBT”) card that the Department did not issue to her. The Department also seeks to recover benefits used by the Defendant that it did not issue to her in the amount of ██████████.

On ██████████, 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 ██████████, and outlined the Defendant’s rights for these proceedings.

On ██████████, the United States Postal Service (“USPS”) delivered the certified mail packet to the Defendant’s address, and she signed for the notification.

On ██████████, in accordance with section 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an ADH.

The Defendant was not present at the hearing and did not show good cause for failing to appear. The following individuals were present at the hearing:

Christopher Pinto, Department's Representative
Kristin Haggan, Fair 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 can disqualify the Defendant for a twelve (12) month disqualification period.

The third issue is whether the Department can recover the resulting overpayment.

FINDINGS OF FACT

1. The Defendant is currently receiving SNAP benefits. (*Department's Testimony*)
2. The Defendant has no previous IPV's. (*Exhibit 5: Electronic Disqualification Recipient System ("EDRS") printout, Department's Testimony*)
3. On [REDACTED], the Defendant signed an Online SNAP application. When the Defendant signed the application, she confirmed that she understands the rules of the EBT program, specifically that she may not use any EBT card other than her own and that she may not allow someone else to use hers. (*Department's Testimony, Hearing Record, Exhibit 2: Online Application*)
4. On [REDACTED], a SNAP recipient ("Recipient") noticed that his EBT card was missing and filed a report with the police stating his [REDACTED], the Defendant, had stolen his EBT card. (*Department's Testimony*)
5. On [REDACTED], the Department made a fraud referral stating that the Defendant used benefits issued to the Recipient without his permission on [REDACTED]. (*Department's Testimony, Hearing Record*)
6. On [REDACTED], someone used the EBT card that the Recipient reported stolen at [REDACTED] in the amount of \$[REDACTED]. (*Hearing Record, Exhibit 5: EBT Transaction History, Exhibit 10: [REDACTED] Receipt*)
7. The Department received still images of the person who used the Recipient's EBT card on [REDACTED]. The [REDACTED] surveillance footage shows the Defendant paying for purchases made there on [REDACTED] at [REDACTED], and leaving the store at [REDACTED]. The [REDACTED] receipt shows that the Defendant used the Recipient's EBT card to pay for the purchases on [REDACTED], at [REDACTED] (*Hearing Record, Exhibit 6: Subpoena, Exhibit 8: Defendant's Driver's License, Exhibit 9: [REDACTED] Surveillance Photos*)

8. The Recipient did not make the Defendant an Authorized Representative or an Authorized Shopper of his SNAP benefits. (*Department's Testimony, Hearing Record*)
9. On [REDACTED], the Department mailed the Defendant a Notice of Waiver of Disqualification Hearing for the SNAP program. The notice gives the option to sign the waiver. The Defendant was either unable or unwilling to return the waiver. (*Hearing Record, Exhibit 3: Department of Social Services Waiver of Disqualification Hearing SNAP Program*)
10. The Department seeks to disqualify the Defendant from participation in the SNAP program for a period of twelve (12) months due to an IPV which occurred when the Defendant knowingly used benefits that the Department did not issue to her and for which she was not an Authorized Representative or Authorized Shopper for. (*Hearing Record*)
11. The Department seeks to recover [REDACTED] for the unauthorized purchases that the Defendant made using the Recipient's EBT card on [REDACTED]. (*Hearing Record*)
12. The issuance of this decision is timely under Title 7 Section 273.16(e)(20)(iv) of the Code of Federal Regulations ("C.F.R.") which requires that the agency issue a decision within 90 days of the notice of the initiation of the ADH process. On [REDACTED], OLCRAH mailed the Defendant notification of the initiation of the ADH process; therefore, this decision is due no later than [REDACTED].

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes 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.

Section 17b-88 of the Connecticut General Statutes 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 (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.

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.

On [REDACTED], the Defendant signed for the certified mail delivery of the ADH packet. The ADH packet OLCRAH mailed to the Defendant contained the

following information: the date, time, and place of the hearing; a summary of the Department's charges against the Defendant; a summary of the evidence, and how and where the Defendant can examine the evidence; a warning that the decision will be based solely on the information provided by the State agency if the Defendant fails to appear at the hearing.

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

3. 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.

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 Department correctly determined that the Defendant's driver's license photo matches the person shown on the [REDACTED] surveillance footage from [REDACTED], [REDACTED]

The Department correctly determined that the Defendant's deliberate use of an EBT card that did not belong to her is an IPV.

4. 7 C.F.R. § 273.16 (a) provides for administrative responsibility. (1)The State agency shall be responsible for investigating any cases of alleged Intentional Program Violation and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or a 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 to prosecution a case involving an over issuance caused by a suspected act of Intentional Program Violation, the State agency shall take action to collect over issuance by establishing an inadvertent household error claim against the household in accordance with 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 formerly 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 or 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 of the current eligibility of the individual.

The Department did not refer the Defendant's case for civil or criminal prosecution.

5. 7 C.F.R. § 273.16(a)(3) provides 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(e)(8)(i) provides for imposition of disqualification penalties. 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 procedures in paragraph (b) of this section. The same act of Intentional Program Violation repeated over a period of time must not be separated so that separate penalties can be imposed.

7 C.F.R. § 273.16(b)(1)(i) provides for 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 the right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the program for a period of twelve months for the first Intentional Program Violation, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section.

The Department is correctly seeking to disqualify the Defendant from participating in the SNAP program for a period of twelve (12) months as this is her first IPV.

6. 7 C.F.R. § 273.16(b)(12) provides for the claims and the repayment process and specifies even though only the individual is disqualified, the household, as defined in 7 C.F.R. § 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.

The Department correctly determined the Defendant is responsible for repayment of the unauthorized SNAP benefits that she used on [REDACTED], that did not belong to her.

7. 7 C.F.R. § 273.18(c)(1)(i) provides for calculating the claim amount. For an IPV claim, the claim must be calculated back to the month the act of IPV first occurred.

The Department correctly established the IPV overpayment is for the period the Defendant used the unauthorized EBT card on [REDACTED].

8. 7 C.F.R. § 271.2 defines trafficking as (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; (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. § 273.18(c)(2) provides for claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by:

- (i) The individual's admission;
- (ii) Adjudication; or
- (iii) The documentation that forms the basis for the trafficking determination

The Department correctly calculated the SNAP overpayment of [REDACTED], which is the amount that the Defendant charged to the Recipient's EBT card on [REDACTED]

DISCUSSION

[REDACTED] video surveillance matches the Defendant's license photo, and a [REDACTED] receipt shows the date and time the Defendant was at the store and made a purchase of [REDACTED] using the EBT card that belonged to the Recipient.

DECISION

The Defendant is guilty of committing an IPV under the SNAP program. The Department's request to disqualify the Defendant from the SNAP program for a period of twelve (12) months is **GRANTED**.

The Department's request to recover the overpayment claim of [REDACTED] for the period of [REDACTED], is **GRANTED**.

Kristin Haggan

Kristin Haggan
Fair Hearing Officer

CC: OLCRAH.QA.DSS@CT.gov
Christopher Pinto, Fraud Investigator

RIGHT TO APPEAL

The defendant has the right to appeal this decision to the 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 to 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 following §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.