

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

██████████ 2023
Signature Confirmation

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████████████████████
Request # 217435

ADMINISTRATIVE DISQUALIFICATION HEARING

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

The Department of Social Services (the “Department”) requested an Administrative Disqualification Hearing (“ADH”) to seek the disqualification of ██████████ (the “Defendant”), from participating in the Supplemental Nutrition Assistance Program (“SNAP”) for twelve (12) months. The Department alleges that the Defendant committed an Intentional Program Violation (“IPV”) by using a deceased person’s SNAP benefits. The Department is seeking to recover \$965.53 in overpaid SNAP benefits. This is the Defendant’s first IPV offense in the SNAP.

On ██████████ 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) notified the Defendant of the initiation of the ADH process via certified mail delivery. The notification outlined the Defendant's rights in these proceedings. The hearing was scheduled for ██████████ 2023.

The United States Postal Service (“USPS”) did not show that the Defendant signed for receipt of the ADH packet. On ██████████ 2023, the Hearing Officer notified the Defendant of the ADH hearing via first-class mail with the USPS.

On ██████████ 2023, the Defendant refused to accept the ADH packet that was mailed via certified mail delivery.

On [REDACTED] 2023, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an Administrative Disqualification Hearing. The following individuals were present at the hearing:

Ashley Miller, Department's Representative
Carla Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Defendant committed an IPV of the SNAP, is subject to disqualification from program participation for 12 months.

The second issue to be decided is whether the Department's proposal to recoup a \$965.53 SNAP overpayment is correct.

FINDINGS OF FACT

1. The Defendant is a current recipient of SNAP benefits. (Department's Testimony)
2. The Defendant did not participate in the ADH hearing proceedings. Nor did she provide good cause for failing to appear. (Hearing Record)
3. [REDACTED] was a recipient of SNAP benefits. (Exhibit 3: EBT Transactions for [REDACTED], Hearing Record)
4. On [REDACTED] 2023, [REDACTED] ("the deceased person") passed away. (Exhibit 2: SOLQ-I Results Details; Department's Testimony)
5. SOLQ-I is a program that provides information from Social Security. (Department's Testimony)
6. [REDACTED] EBT card was used several times between [REDACTED] 2023, and [REDACTED] 2023. (Exhibit 3; Department's Testimony)
7. The Defendant was not listed as an authorized representative on [REDACTED] case. (Department's Testimony)
8. The relation between [REDACTED] and the Defendant is not known by the Department. (Department's Testimony)
9. On [REDACTED] 2023, the Department acted on a complaint that the deceased person's EBT card was used after his date of death. The Department's investigation revealed that his EBT card was utilized multiple times between [REDACTED] 2023, and [REDACTED] 2023, at [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (Exhibit 1: Update Referral, [REDACTED] 23; Hearing Record)

10. On [REDACTED] 2023, the Department contacted [REDACTED] [REDACTED] (“the Senior Supervisor”), the [REDACTED] at [REDACTED] [REDACTED] request loyalty card information and receipts for transactions that were initiated at the [REDACTED] locations. (Exhibit 4: Email Sent from the Department to [REDACTED])

11. On [REDACTED] 2023, the Senior Supervisor submitted the loyalty rewards information for the transactions submitted by the Department. (Exhibit 5: Email from the Senior Supervisor at [REDACTED] 23)

12. On the dates listed below, Harold Hinds’ EBT card was utilized at [REDACTED] located at [REDACTED] Connecticut using the Defendant’s [REDACTED] rewards card:

Date	Amount
[REDACTED] 23	\$68.08
[REDACTED]/23	\$110.00
[REDACTED]/23	\$214.18
Total	\$392.26

(Exhibit 3, Exhibit 5)

13. On [REDACTED] 2023, a transaction totaling \$6.43 was completed using the deceased person’s EBT card, but there was no loyalty card associated with this transaction. (Exhibit 3; Exhibit 5)

14. On [REDACTED] 2023, the deceased person’s EBT card was used at [REDACTED], located at [REDACTED], Connecticut for a transaction totaling \$193.11 with [REDACTED] loyalty card. (Exhibit 5, Hearing Record)

15. [REDACTED] is not a member on the Defendant’s SNAP benefit but resides at the same address as the Defendant. (Exhibit 5; Department’s Testimony)

16. [REDACTED] is known to the Department as [REDACTED] (Exhibit 7: Case Notes)

17. The Department does not know the relationship between the Defendant and [REDACTED] (Department’s Testimony)

18. On [REDACTED] 2023, the deceased person’s EBT card was used at [REDACTED] located at [REDACTED] Connecticut for a transaction totaling \$66.40 with the Defendant’s [REDACTED] loyalty card. (Exhibit 5, Hearing Record)

19. The EBT transactions associated with the Defendant’s [REDACTED] loyalty card equals \$458.66 ($\$392.26 + \$66.40 = \458.66)

20. On [REDACTED] 2023, the Department closed the deceased person's SNAP case and expunged \$281.00 in SNAP benefits remaining in his account. (Hearing Record)
21. On [REDACTED] 2023, the Department mailed the Defendant a *W-1448 Notice of Prehearing Interview* informing her of the proposed \$965.53 SNAP overpayment and a *W-1449 Waiver of Disqualification Hearing ("W-1449")* for the SNAP informing her that she could contact the Department for more information about the IPV and disqualification, sign the waiver, or withdraw the waiver. The Defendant was given a deadline of [REDACTED], to respond. (Exhibit 8: Notice of Prehearing Interview; Exhibit 9: W-1449)
22. The Defendant did not sign and return the W-1449. (Hearing Record)
23. The Defendant has no prior IPV's. (Exhibit 11: Electronic Disqualification Recipient System; Department's Testimony)
24. The Department is seeking to disqualify the Defendant from participating in the SNAP for one year and is seeking recovery of \$965.53 in overpaid SNAP benefits due to an IPV of trafficking. (Hearing Record)
25. The Department did not provide loyalty card information for the transactions completed at [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. (Hearing Record)
26. The Department charged the Defendant with \$965.53 in transactions because their evidence shows that the Defendant possessed the deceased person's card from [REDACTED] 2023, through [REDACTED] 2023. (Department's Testimony)
27. The issuance of the decision is timely based on Title 7 of the Code of Federal Regulations Section § 273.16(e)(2)(iv) which provided 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 Department notified the Defendant on [REDACTED] 2023, therefore, this decision is due no later than [REDACTED] 2023. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the SNAP program.
2. Section 17b-88 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to recover any public assistance overpayment and take such other action as conforms to federal regulations, including, but not limited to, conducting administrative disqualification hearings.

3. Title 7 of the Code of Federal Regulations (“C.F.R.”) Section 273.16(a)(1) provides that 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 C.F.R. § 273.16(e) provides that the State agency shall conduct administrative disqualification hearings for individuals accused of Intentional Program Violation.

The Department has the authority to administer the SNAP program and conduct Administrative Disqualification Hearings.

4. Title 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

Title 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 Department properly notified the Defendant of the ADH on [REDACTED] 2023, and [REDACTED] 2023.

The defendant was not present at the hearing and did not provide good cause for failing to appear.

5. Title 7 C.F.R. § 273.16(a)(1) provides that 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. 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. The Department correctly initiated administrative disqualification proceedings.

7. Title 7 C.F.R. § 273.16(a)(3) provides that 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 individual 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.

The Defendant did not sign and return the disqualification consent agreement.

8. Title 7 C.F.R. § 271.2 defines trafficking as:

- (1) The buying, selling, stealing, or otherwise affecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or 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.

The Department correctly determined that the defendant used the deceased person's SNAP benefits which constitute trafficking.

9. Title 7 C.F.R. § 273.16(c) provides that 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 the 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.

Title 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 intended to commit and committed an IPV when she used the deceased person's SNAP benefits.

The Defendant's deliberate use of the deceased person's EBT card after his death constitutes an IPV.

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

Title 7 C.F.R. § 273.16(b)(1)(i) provides that 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 paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section.

Title 7 C.F.R. § 273.16(b)(5) provides for disqualification penalties and states that individuals found to have committed an IPV shall be ineligible to participate in the program for a period of twelve months for the first IPV, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section.

The Department is correct to seek the Defendant's disqualification from participating in the SNAP for twelve months. The hearing record clearly and convincingly established that the Defendant intentionally used the deceased person's SNAP EBT card after his death.

11. Title 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.
12. Title 7 C.F.R. § 273.18(a)(1)(ii) provides a recipient claim is an amount owed because of benefits that are trafficked. Trafficking is defined in 7 C.F.R. 271.2.

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

Title 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 the overpayment is the result of an IPV.

13. Title 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.

Title 7 C.F.R. § 273.18(c)(2) provides for calculating the claim amount from trafficking-related claims. 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 incorrectly determined that \$965.53 in SNAP benefits were trafficked between [REDACTED] 2023, through [REDACTED] 5023.

The transaction initiated on [REDACTED] 2023, at [REDACTED] for \$193.11 was made with the [REDACTED] loyalty card of another member residing in the Defendant's home, not the Defendant.

Of the \$772.42 ($\$965.53 - \$193.11 = \774.42) remaining from the overpayment, only \$458.66 ($\$392.26 + \$66.40 = \458.66) can clearly and convincingly be attributed to use by the Defendant.

The Department incorrectly proposed a SNAP overpayment claim for \$965.53.

The correct SNAP overpayment claim is \$458.66.

DECISION

The Defendant is **GUILTY** of committing her first SNAP IPV due to trafficking. She is disqualified and ineligible to participate in the SNAP for one year. The Department is authorized to seek recovery of \$458.66 in restitution from the Defendant.

ORDER

1. The Department shall rescind any notices requesting recovery of \$965.53 in SNAP benefits from the Defendant.
2. The Department shall issue a new notice requesting recovery of \$458.66 from the Defendant.
3. Compliance with this order shall be submitted to the undersigned no later than [REDACTED] 2023.

Carla Hardy

Carla Hardy
Hearing Officer

Pc: Quality Assurance, Department of Social Services
Ashley Miller, Investigator, Department of Social Services

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.