

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

██████████
██████████
REQUEST# 218398

ADMINISTRATIVE DISQUALIFICATION HEARING

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2023, the Department of Social Services (the "Department") requested an Administrative Disqualification Hearing ("ADH") to seek the disqualification of ██████████ (the "Defendant") from participation in the Supplemental Nutrition Assistance Program ("SNAP") for a period of twelve (12) months. The Department alleges that the Defendant committed an Intentional Program Violation ("IPV") because of the Defendant's intentional misuse of someone else's Electronic Benefit Transfer ("EBT") card. The Department also seeks to recover overpaid SNAP benefits. The Department alleges that the SNAP overpayment totaled \$329.46 for the period of ██████████, 2021, through ██████████, 2021.

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. The notification outlined the Defendant's rights for these proceedings and scheduled the ADH for ██████████ 2023.

On ██████████, 2023, the OLCRAH mailed the ADH packet and scheduling notice via first class mail to the Defendant and it has not been returned by the United States Postal Service ("USPS").

On [REDACTED] 2023, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes and Title 7 of the Code of Federal Regulations Section 273.16 subsection (e), OLCRAH held the Administrative Disqualification Hearing. The Defendant was not present at the hearing and did not provide good cause for not appearing.

The following individuals participated in the hearing:

Amy Hayden, Investigations Supervisor, Department's Representative
 Joshua Ives, Investigator, Department Observer
 Melissa Prisavage, Hearing Officer

STATEMENT OF THE ISSUE

The first issue to be decided is whether the Defendant committed an Intentional Program Violation ("IPV") of the SNAP and is therefore subject to a twelve (12) month disqualification penalty.

The second issue is whether the Department's proposal to recoup a SNAP overpayment of \$329.46 for the period of [REDACTED], 2021, through [REDACTED], 2021, is correct.

FINDINGS OF FACT

1. The Defendant is a current recipient of SNAP benefits. (Exhibit 3: IMPACT Case Summary for [REDACTED])
2. On [REDACTED], 2021, [REDACTED] died at her home. (Exhibit 13: Death Certificate)
3. During the period of [REDACTED], 2021, through [REDACTED], 2021, [REDACTED] EBT card was used to access her SNAP benefits as detailed below:

Transaction Date	Store	Transaction Amount	Eligible Transaction?
[REDACTED], 2021	[REDACTED]	\$95.08	No
[REDACTED] 2021	[REDACTED]	\$12.00	No
[REDACTED], 2021	[REDACTED]	\$75.40	No
[REDACTED], 2021	[REDACTED]	\$50.08	No
[REDACTED], 2021	[REDACTED]	\$19.94	No
[REDACTED], 2021	[REDACTED]	\$48.30	No
[REDACTED] 2021	[REDACTED]	\$18.40	No

██████████, 2021	██████████	\$10.26	No
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(Exhibit 15: EBT Transaction Report)

4. During the period of ██████████, 2021, through ██████████, 2021, multiple phone numbers were used to check the balance on ██████████ EBT card. The Defendant's phone number was one of these numbers. (Exhibit 15, Exhibit 3)
5. It is unknown what relationship existed between the Defendant and ██████████. (Department's Testimony)
6. The Defendant and ██████████ resided at the same address and the same phone number was listed for both of them in IMPACT. (Exhibit 3, Exhibit 4: IMPACT Case Summary for ██████████)
7. The Defendant was not listed as a "responsible adult" or an "authorized shopper" on ██████████ case. (Exhibit 4)
8. On ██████████, 2023, the Department initiated an investigation into the improper use of ██████████ SNAP EBT card after her death. (Exhibit 1: Investigations referral)
9. On ██████████ 2023, the Department mailed the Defendant a W-1448S, Notice of Prehearing Interview, and a W-1449S, Waiver of Disqualification Hearing SNAP Program. The notice indicated that there is an overpayment of \$329.46 for the use of an EBT card that was issued to another client. The notice pointed out that if he chooses to sign the waiver he must do so by ██████████, 2023, or the Department would consider administrative or legal action. (Exhibit 8: W-1448S, Exhibit 9: W-1449S)
10. On ██████████ 2023, the Department calculated SNAP overpayments because of the unauthorized use of ██████████ EBT card after her death. The overpayments were calculated as follows:

Transaction Date	Overpayment
██████████, 2021	\$95.08
██████████, 2021	\$205.72
██████████ 2021	\$18.40
██████████, 2021	\$10.26
Total	\$329.46

(Exhibit 12: Overpayment Details)

11. The Defendant has no prior SNAP intentional program violation penalties. (Exhibit 7: Electronic Disqualified Recipient System Query)

12. The Department seeks to disqualify the Defendant from participation in the SNAP for a period of twelve (12) months due to an IPV when the Defendant allegedly used [REDACTED] EBT card after her death. (Department's Testimony, Exhibit 15)
13. The issuance of this decision is timely under Title 7 § 273.16(e)(2)(iv) of the Code of Federal Regulations ("C.F.R."), which requires that the agency issue a decision within 90 days of the initiation of the ADH process. On [REDACTED], 2023, the OLCRAH received the request for an ADH hearing. The OLCRAH initiated the ADH process on [REDACTED] 2023; therefore, this decision is due no later than [REDACTED] 2023.

CONCLUSIONS OF LAW

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

The Department has the authority to administer the SNAP.

2. 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 (1) shall immediately initiate recoupment action and shall consult with the Division of Criminal Justice to determine whether to refer such overpayment, with full supporting information, to the state police, to a prosecuting authority for prosecution or to the Attorney General for civil recovery, or (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.

The Department has the authority to recover SNAP benefits.

3. 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 Defendant's case has not been referred for civil or criminal prosecution.

The Department properly initiated the ADH.

4. 7 C.F.R. § 273.2(n)(1)(i) provides that a nonhousehold member may be designated as an authorized representative for the application process provided that the person is an adult who is sufficiently aware of relevant household circumstances and the authorized representative designation has been made in writing by the head of household, the spouse, or another responsible member of the household.
5. 7 C.F.R. § 273.2(n)(3) provides in part that a household may allow any household member or nonmember to use its EBT card to purchase food or meals, if authorized, for the household.

The Defendant was neither an Authorized Representative nor an authorized shopper for [REDACTED].

6. 7 C.F.R. § 273.16(c)(2) provides for the definition of Intentional Program Violation. Intentional Program violations shall consist of having intentionally (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards.
7. 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 failed to provide clear and convincing evidence that the Defendant committed and intended to commit an IPV by using [REDACTED] EBT card after her death.

Although evidence was provided that shows that [REDACTED] EBT card was used after her death, there was insufficient information to indicate that the Defendant was the person who used the card.

8. 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.

9. 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.

Delivery of the ADH notice that included a summary of the Department's charges was attempted via certified mail but has not yet been returned by the United States Postal Service.

The ADH notice that included a summary of the Department's charges sent on [REDACTED], 2023, via first class mail was not returned to the OLCRAH, therefore it is presumed the Defendant received it, thus was notified of the hearing properly.

The Defendant failed to appear for the scheduled ADH on [REDACTED] 2023, and did not provide good cause for failing to appear.

10. 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.

The Defendant did not sign or return the Waiver of Disqualification Hearing form (W-1449S) the Department sent to him on [REDACTED], 2023.

11.7 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.

12.7 C.F.R. § 273.18(a)(2) provides for claims against households and states 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.

13.7 C.F.R. § 273.18(a)(3) provides for claims against households and states as a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collection similar to recent national rates of collection. If you do not meet these standards, you must take corrective action to correct any deficiencies in the plan.

14.7 C.F.R. § 273.18(a)(4)(i) provide for claims against households and states the following are responsible for paying a claim; each person who was an adult member of the household when the overpayment or trafficking occurred.

The Department incorrectly determined that the overpayment is the result of an IPV and is incorrect to seek recoupment from the Defendant.

DECISION

The Defendant is found **NOT GUILTY** of committing a first offense IPV in the SNAP program and therefore not subject to a 12-month IPV disqualification penalty.

The Department's request to recover the SNAP overpayment claim totaling \$329.46 due to unauthorized use of an individual's EBT card between [REDACTED], 2021, and [REDACTED], 2021, is **DENIED**.

ORDER

1. The Department is ordered to rescind its proposal to disqualify the Defendant from participating in the SNAP program for a period of one year due to unauthorized use of an individual's EBT card.
2. The Department is ordered to rescind its proposal to recover the SNAP overpayment of benefits for the period of [REDACTED], 2021, through [REDACTED], 2021, of \$329.46 due to unauthorized use of an individual's EBT card.
3. Compliance is due within 14 days of the date of this decision.



Melissa Prisavage
Fair Hearing Officer

CC: OLCRAH.QA.DSS@CT.gov
Amy Hayden, DSS, Investigations Supervisor

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.