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July 11, 2019



Docket #19-1553
DOB: [REDACTED] 1970
Date of Hearing: June 4, 2019

ADMINISTRATIVE DISQUALIFICATION HEARING DECISION

The Administrative Disqualification Hearing has been decided against the Agency. During the course of the proceeding, the following issue(s) and Agency and Federal Rules and Regulation(s), were the matters before the hearing.

CODE of FEDERAL REGULATION: FOOD AND NUTRITION SERVICE 7 CFR 273.16 - DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION

THE RHODE ISLAND DEPARTMENT OF HUMAN SERVICES (DHS) 218-RICR-20-00-1 Supplemental Nutrition Assistance Program (SNAP) Section 1.9 Intentional Program Violations Section 1.17 Benefit Overissuance and Claims Section 1.21 K Administrative Disqualification Hearings (ADH)

The facts of your case, applicable regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the Respondent), and Agency representatives Brittny Badway, Brianna Ruggiero, Kimberly Seebeck (Department of Administration, Office of Internal Audit, Fraud Detection and Prevention Unit), and KC Brody and Karen Vincent (Department of Revenue).

Present at the Administrative Disqualification Hearing convened on the above cited date were: Agency Representatives Brittny Badway (Internal Auditor) and Brianna Ruggiero (Sr. Internal Auditor).

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.



ISSUE: Did you, the Respondent, commit an intentional SNAP Program violation by trafficking your SNAP benefits?

THE CODE OF FEDERAL REGULATION-FOOD AND NUTRITION SERVICE,
DEPARTMENT OF AGRICULTURE

Section 7 CFR 273.16(e)(6) entitled Criteria for determining intentional program violation, states:

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, intentional program violation as defined in paragraph (c) of this section.

Section 7CFR.16(c) entitled Definition of intentional program violation, states:

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 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.*

An Administrative Disqualification Hearing was convened on June 4, 2019 to examine the charge that the Respondent had committed an Intentional Program Violation of the Supplemental Nutrition Assistance Program (SNAP) regulations. The Respondent Failed to appear at the hearing. In accordance with 7 CFR 273.16(e)(3) and 218-RICR-20-00-1 Section 1.21K7, the Agency had provided at least thirty (30) days advance notice, in writing, of the scheduling of this hearing. The notice was sent by first class mail to the Respondent's mailing address of record and has not been returned. In accordance with 7CFR 273.16(e)(4), and 218-RICR-20-00-1 Section 1.21 K 14, the hearing was conducted without the Respondent present or represented. Even though the Respondent was not present or represented, the Administrative Disqualification Hearing Officer is nonetheless required to carefully consider the evidence and determine if an Intentional Program Violation had occurred, in accordance with the standard of clear and convincing evidence.



The Agency maintains that the Respondent intentionally violated a SNAP program rule when he trafficked \$192.00 of his SNAP benefits.

The Agency representative submits the following into evidence:

- A copy of video/film taken on September 4, 2018 at the [REDACTED] store located at [REDACTED] marked as Agency Exhibit #1a.
- A screenshot of a video/film taken on September 4, 2018 at the [REDACTED] store located at [REDACTED] marked as Agency Exhibit #1b.
- A copy of a printout of a transaction/receipt dated 09/04/2018 at 21:18 hours showing \$192.00 of the purchase was made using the Respondent's EBT card/SNAP benefits, marked as Agency Exhibit #2.
- A printout from the EBT Transaction Database of the Respondent's SNAP case information and the \$192.00 transaction made on his EBT card on 09/04/2018 at the [REDACTED] located at [REDACTED] marked as Agency Exhibit #3.
- A copy of the Respondent's DMV photo, marked as Agency Exhibit #4.
- A copy of the Respondent's SNAP RENEWAL FORM received in the DHS office on May 3, 2018, marked as Agency Exhibit #5.
- A printout of the results of a search for the Respondent in the Electronic Disqualified Recipient System (EDRS), marked as Agency Exhibit #6.
- A "Waiver of Right to Administrative Disqualification Hearing" letter sent from the R.I. Office of Internal Audit, addressed to the Respondent, informing the Respondent that he could waive his right to the hearing by signing the included Waiver Agreement form and accepting the same penalty as if he lost at hearing. Included with the notice was a copy of a January 9, 2019 letter, informing the Respondent of the alleged over-issuance of SNAP benefits totaling \$192.00 for the time period of 9/04/2018 to 9/04/2018 as a result of fraudulent activity, specifically trafficking, marked as Agency Exhibit #7.
- A copy of a letter sent from the R.I. Office of Internal Audits, Fraud Detection and Prevention Unit, addressed to the Respondent and dated January 4, 2019, informing the Respondent of the alleged Intentional Program Violation (IPV)/trafficking of SNAP benefits, marked as Agency Exhibit #8.

The Agency representative testifies that the investigation began as a result of information obtained during another trafficking investigation, and that upon investigation, the following was found:

- On September 4, 2018 at 9:17 pm, an unidentified male used the Respondent's EBT card, along with two other EBT cards, at the [REDACTED] located at [REDACTED], and \$192.00 of the Respondent's SNAP benefits was used towards the transaction/items purchased.
- The individual had three SNAP EBT cards, which he swiped at the store terminal. The first card he tried was declined due to insufficient funds, and the other two (2) cards, one of which was the Respondent's, were processed. The individual also used \$21.00 in cash to complete the transaction.
- The video/film shows that in between swiping the cards, the individual is looking at his phone and it appears he does not know the PIN number for the cards right away.
- The individual in the video/film is not the Respondent.
- The Respondent is the only authorized user of his EBT card.
- The Respondent trafficked SNAP benefits in the amount of \$192.00.
- The Rights and Responsibilities are outlined in the SNAP application. The penalty warnings in the SNAP application identify trafficking as defined in 7 CFR 271.2, specifically stating: "Buying, selling, stealing or attempting to buy, steal, or otherwise effect 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...DO NOT trade or sell (or attempt to trade or sell) EBT cards or use someone else's EBT card for your household."
- The following penalty warning is stated on Page 30 of the SNAP application:
"I certify under penalty of perjury that my answers are correct, including information about citizenship and alien status, and complete to the best of my knowledge and belief. I know that under the state of Rhode Island General Laws, Section 40-6-15, a maximum fine of \$1000, or imprisonment of up to five (5) years, or both, may be imposed for a person who obtains or attempts to obtain, or aids or abets any person to obtain, public assistance to which s/he is not entitled or who willfully fails to report income, resources or personal circumstance or



increases therein which exceed the amount previously reported. I attest to the identity of the minor children identified herein and that all the information contained in this application is true. I understand that I am breaking the law if I give wrong information and can be punished under federal law, state law or both. “

- On May 3, 2018, DHS received the Respondent’s Renewal Form for continuation of his SNAP benefits for himself. Page 9 of the SNAP Renewal states the Penalty Warning: “My signature below indicated that I have read or have had read to me the Rights and Responsibilities attached to this form. Under penalty of perjury, I attest that all of my answers on this renewal form are correct and complete to the best of my knowledge, including information about citizenship and immigration status and the identity of the minor children named in this form. I understand that I am breaking the law if I purposely give wrong information and can be punished under federal law, state law, or both.” The Respondent’s signature is indicated, and the Renewal form is dated May 3, 2018.
- There is no evidence of any prior SNAP intentional program violations committed by the Respondent.

The Agency representative in her summation contends that the Agency has demonstrated by clear and convincing evidence that the Respondent has committed an Intentional Program Violation (IPV) by trafficking \$192.00 of his SNAP benefits, despite being aware that he was not allowed to do so. The Agency thereby requests that the Respondent be disqualified from participation in the SNAP program for a period of one (1) year, as it is his first violation, and that he be required to repay the \$192.00 in SNAP benefits which he trafficked.

FINDINGS OF FACT

After a careful review of the record of hearing, the following findings of fact have been established.

1. Trafficking is a violation of the SNAP rules.
2. Federal SNAP regulations, specifically 7 CFR 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;*
 - (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.*

3. State SNAP regulations, specifically 218-RICR-20-00-1 Section 1.9i., 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;*

(2) *The exchange of firearms, ammunition, explosives, or controlled substances, as defined in 21 U.S.C. § 802, 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

4. Per State SNAP regulation 218-RICR-20-00-1, Section 1.17 A.2., a SNAP claim is a federal debt/an amount owed because benefits were trafficked, which is defined here as “...*buying or selling of benefit instruments such as EBT cards for cash or consideration other than eligible food.*”. Per section 1.17 B.2.a.(2) the claim arising from a trafficking-related offense is the value of the trafficked benefits as determined by either the individual’s admission, adjudication or the documentation that forms the basis for the trafficking determination.
5. The Department of Human Services received the Respondent’s SNAP Renewal Form on May 3, 2018.
6. The Respondent received SNAP benefits subsequent to the submission of his Renewal Form on May 3, 2018.
7. The Respondent was the only individual authorized to use his EBT card/SNAP benefits.
8. The Respondent’s EBT card was used on September 4, 2018 at 9:17 pm at the [REDACTED] located at [REDACTED] and \$192.00 of the Respondent’s SNAP benefits went towards the \$447.78 total price of the purchase/transaction.

DISCUSSION OF THE EVIDENCE RECORD

The State and Federal Supplemental Nutrition Assistance Program (SNAP) regulations clearly state that “trafficking” is a violation of the SNAP rules. The regulations further stipulate that if a SNAP recipient trafficks his SNAP benefits after being properly informed of the SNAP program rules and the penalties for violating those rules, then he/she is considered to have committed a SNAP Intentional Program Violations (IPV) and is subject to disqualification from the SNAP program, and repayment of the trafficked benefits.

The Agency argues that someone other than the Respondent used the Respondent’s EBT card and SNAP benefits in the amount of \$192.00 on September 4, 2018, as shown on a video/film received from the [REDACTED] located at [REDACTED]. Despite having no evidence as to how the individual gained possession of the Respondent’s EBT card, the Agency concluded that the Respondent trafficked his EBT card/benefits because the following indicators of trafficking existed: the Respondent was the only authorized user of his EBT card; the individual used all of the SNAP benefits available on the Respondent’s EBT card; and the individual used or attempted to use multiple EBT cards to complete the transaction. The Agency further argues that the Respondent had been informed that he was not allowed to traffick his SNAP benefits and

he should thereby be found to have violated a SNAP IPV and be required to repay the \$192.00 in SNAP benefits he trafficked and be disqualified from participating in the SNAP program for one (1) year, as this would be his first offense.

Per the SNAP regulation's definition of trafficking, for an exchange of SNAP benefits like that alleged by the Agency to be considered trafficking, there must be proof not only that the Respondent allowed another individual to use his SNAP EBT card, SNAP PIN (personal identification number), and/or SNAP benefits, but that he received cash or some other consideration in exchange for his SNAP EBT card, SNAP PIN, and/or SNAP benefits. A full review of the evidence record finds that the Agency has failed to provide any evidence that the Respondent received and/or attempted to receive cash or any other consideration in exchange for his SNAP EBT card, SNAP PIN, and/or SNAP benefits. Additionally, while the evidence submitted does establish that the Respondent's EBT card was used on September 4, 2018 at the [REDACTED] located at [REDACTED]; that a SNAP transaction was made by swiping the Respondent's EBT card and entering his PIN number; and that \$192.00 in SNAP benefits from the Respondent's SNAP account was used towards the purchase, the video/film of the September 4, 2018 transaction is of poor quality and is mostly of the side and back of the individual. Comparison of the Respondent's DMV photo with the video/film of the EBT transaction fails to establish that the individual making the transaction is not the Respondent.

CONCLUSION:

After a careful review of the testimony and documents presented at hearing, this Hearing Officer concludes the following:

1. The Respondent's EBT card, PIN (personal identification number), and SNAP benefits in the amount of \$192.00 were used to purchase items on September 4, 2018 at approximately 9:17pm at the [REDACTED] located at [REDACTED].
2. The evidence record fails to establish by clear and convincing evidence that the individual who used the Respondent's EBT card/PIN/SNAP benefits at the [REDACTED] on September 4, 2018 was not the Respondent.
3. The record fails to establish by clear and convincing evidence that the Respondent effectuated an exchange of his SNAP benefits, PIN, and/or EBT card, for cash or consideration other than eligible food.
4. The Agency has failed to demonstrate by clear and convincing evidence, that the Respondent has committed trafficking.
5. The Agency has failed to demonstrate by clear and convincing evidence that the

Respondent has committed the alleged Intentional Program Violation (IPV) of the Supplemental Nutrition Assistance Program.

As the Agency has failed to establish by clear and convincing evidence that the Respondent has committed the alleged Intentional Program Violation (IPV) of trafficking, the Agency's request that the Respondent be disqualified from the SNAP program for one (1) year and be required to repay \$192.00 is denied.

Debra L. DeStefano
Administrative Disqualification Hearing Officer



NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.



CERTIFICATION

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to: [REDACTED]; copies were sent via email to Department of Administration, Office of Internal Audit, Fraud Detection and Prevention Unit representatives Brittany Badway, Brianna Ruggiero, Kimberly Seebeck; and Department of Revenue representatives KC Brody and Karen Vincent on this _____ day of _____, 2019.

