

[REDACTED]
[REDACTED]
[REDACTED]

v.
[REDACTED]

APPELLANT

* BEFORE JEROME WOODS, II,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DHS-[REDACTED]56-18-35331 and
* DHS-[REDACTED]03-18-35330, CONSOLIDATED
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* * * * *

DECISION

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STATEMENT OF THE CASE

On November 13, 2018, the Department of Human Services (DHS), Office of the Inspector General (OIG), on behalf of the [REDACTED] [REDACTED] (Local Department), referred these cases to the Office of Administrative Hearings (OAH) for an Administrative Disqualification Hearing (ADH). The Local Department alleged that the Appellant¹ committed an Intentional Program Violation (IPV) of the Food Supplement Program (FSP) and engaged in FSP trafficking which would also constitute an IPV. After receiving the referrals, the OAH scheduled a hearing and notified the Appellant by mail at her address of record.

¹ "Appellant" means an applicant, recipient, or other individual who is, among other things, the subject of an Intentional Program Violation proceeding. Code of Maryland Regulations (COMAR) 07.01.04.02B(3)(b).

On December 12, 2018, I convened a hearing at the office of the Local Department, in [REDACTED], Maryland. COMAR 07.01.04.21B. [REDACTED] OIG Investigator, represented the DHS on behalf of the Local Department. The Appellant represented herself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the DHS, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 07.01.04; and COMAR 28.02.01.

ISSUES

1. Did the Appellant commit IPV violations of the FSP including trafficking?
2. If so, what sanctions are warranted?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the Local Department:

LD Ex. #1: Administrative Disqualification Hearing Referral Form, with the following attachments:

- Investigative Report, undated;
United States Department of Agriculture (USDA) FSP letter to [REDACTED] November 14, 2017;
- USDA FSP letter to [REDACTED], December 19, 2017;
- General Store Information Report for [REDACTED] August 4, 2016;
- Declaration of Completeness of Record, June 6, 2018;
- Transaction log, November 21, 2013 through October 15, 2017;
- Scan Definitions;
- Appellant/[REDACTED] Transactions, November 21, 2013 through October 15, 2017;
- Customer Electronic Benefits Transfer (EBT) Card Management Issuance printout, October 31, 2013;
- Benefits History, November 13, 2013 through October 13, 2017;
- Appellant Full Supplemental Nutrition Assistance Program (SNAP) Transaction Report, November 9, 2013 through October 21, 2017;
- Family Investment Program Assistance Request Form, October 27, 2013;
- Mail-In Benefits Review Form, February 3, 2014;

- Family Investment Program Assistance Request Form, August 14, 2014;
- Mail-In Benefits Review Form, February 26, 2015;
- Mail-In Benefits Review Form, March 7, 2016;
- Redetermination FSP Application, September 25, 2016;
- Redetermination FSP Application, February 3, 2017;
- Redetermination FSP Application, September 8, 2017;
- Screen Print and Motor vehicle address records;
- Letter from the OIG to the Appellant, undated;
- Advance Notice of Administrative Disqualification Hearing (two) November 1, 2018;
- Waiver of Administrative Disqualification Hearing (two), November 1, 2018.

LD Ex. #2: EBT Pamphlet

The Appellant did not offer any exhibits for admission into evidence.

Testimony

Ms. [REDACTED] testified on behalf of the Local Department and the Appellant testified on her own behalf.

FINDINGS OF FACT

I find the following facts by clear and convincing evidence:

1. At all times relevant to this matter, the Appellant was receiving FSP benefits since at least October 2013 for herself and her [REDACTED] children.
2. When the Appellant began receiving FSP benefits, she received a DHS brochure entitled "Maryland [Electronic Benefits Transfer] EBT" (EBT Pamphlet). The EBT Pamphlet is provided to new EBT card recipients along with their first EBT cards. The EBT Pamphlet provides detailed instructions on how to use the card to access FSP benefits. The EBT Pamphlet also warns recipients not to share their Personal Identification Number (PIN) with anyone and advises that defrauding the system or selling an EBT card or PIN to others is a crime.
3. The EBT Pamphlet also warns recipients that FSP benefits cannot be sold for cash or exchanged for non-food items, and that if it is determined that an IPV occurred, a

recipient will be sanctioned, will be required to reimburse any benefits obtained illegally, and will be disqualified from the FSP and referred for criminal prosecution.

4. On February 3, 2014, August 14, 2014, February 26, 2015, March 7, 2016, September 25, 2016, February 3, 2017 and September 8, 2017, the Appellant filed redetermination SNAP FSP applications with the local department for FSP benefits.
5. By completing and signing the FSP applications, the Appellant acknowledged that she read and understood the information contained therein and agreed to comply with the requirements of the FSP.
6. The Appellant's FSP applications were approved for the receipt of benefits. The DHS issued the Appellant an EBT card for use in purchasing permitted FSP items or for participating in a nonprofit cooperative or meal service.
7. The application filed by the Appellant for FSP benefits contained descriptions of the Appellant's responsibilities as an FSP recipient and the administrative, civil, and criminal penalties that could be imposed if she were to intentionally violate the rules of the FSP. The FSP applications also stated that an FSP recipient is prohibited from trading or selling FSP benefits or EBT cards, from using FSP benefits to purchase items not authorized by the FSP, and from using someone else's FSP benefits or EBT card without authorization.
8. The Appellant was issued an EBT card ending in [REDACTED] which remains active.
9. The Appellant used her EBT card to shop at [REDACTED] located in [REDACTED] Maryland.
10. [REDACTED] is a small-sized grocery store (2,600 square feet) that sells snack foods, canned goods, frozen foods, meat, produce, milk, eggs, non-alcoholic beverages, and

other grocery products. The store contains an EBT terminal and normally operates seven days per week on a twenty-four hour basis.

11. [REDACTED] has fewer than ten shopping baskets, fewer than ten shopping carts, two EBT terminals, two cash registers, and at least two optical scanners.
12. [REDACTED] does not serve hot food for off-site consumption.
13. [REDACTED] does not serve hot or cold food for on-site consumption.
14. Based on an investigation, the USDA/Food and Nutrition Service (FNS) found that [REDACTED] had engaged in trafficking.² The USDA made this determination because its investigation revealed usage of EBT cards at [REDACTED] for multiple transactions made from individual benefit accounts and excessively large purchase transactions from recipient accounts.
15. [REDACTED] does not sell food items in bulk.
16. As part of the investigation, a SNAP inspector visited the store in August 2016. The investigator took photographs and wrote a description and diagram of the store.
17. On November 14, 2017, the USDA sent a letter to the owner of [REDACTED] informing the owner that he was being charged with trafficking.
18. On December 19, 2017, the USDA FNS disqualified [REDACTED] from participation

² Under federal law, "trafficking" includes:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of [FSP] 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 [FSP] benefits;
- (3) Purchasing a product with [FSP] 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 [FSP] 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 [FSP] benefits in exchange for cash or consideration other than eligible food; or
- (5) Intentionally purchasing products originally purchased with [FSP] benefits in exchange for cash or consideration other than eligible food.

7 C.F.R. § 271.2 (2018).

in the SNAP because the FNS determined that [REDACTED] had trafficked in SNAP benefits.

19. As a result of its investigation, the FNS determined that transactions over \$37.00 at [REDACTED] were excessively large purchases for this store based on the store's size, inventory, and pricing.
20. The FNS referred the Appellant to the DHS/OIG for investigation after determining that her EBT card had been used at [REDACTED] during the period of time when the store was engaged in SNAP trafficking. The period of time is November 2013 through October 2017.
21. The Appellant's EBT card was used at [REDACTED] between November 2013 and October 2017 for total transactions of \$12,131.85.
22. With regard to excessively large transactions, i.e. transactions over \$37.00, between November 2013 and October 2017, the Appellant's card was used forty-one times.
23. Some of the excessively large purchases included purchases over \$75.00 at least thirty-nine times.
24. Of the thirty-nine purchases, six were for over \$110.00.
25. Of the thirty-nine purchases, eight were for over \$305.00.
26. Of the thirty-nine purchases, six were for over \$415.00.
27. Of the thirty-nine purchases, four ranged from at least \$515.00 to \$583.00.
28. The total daily SNAP sales for the store during the period in question, was \$178.63 per day.
29. During the period in question, the Appellant's average transaction size was \$271.71.
30. [REDACTED]'s average SNAP transaction for the period in question was \$62.81.
31. At varying points prior to and during the period of time from November 2013 through

- October 2017, the Appellant and her children visited the Appellant's sister in [REDACTED]
32. Between May and September 2016, the Appellant's EBT card was used in [REDACTED] [REDACTED] at least sixty-seven times.
33. At varying times between May and September 2016, the Appellant purchased food items for her children. The items were stored at her sister's home in [REDACTED]
34. At varying points during the period of time from November 2013 through October 2017, the Appellant used her EBT card to purchase food for relatives.
35. In November 2018, the OIG investigator, Ms. [REDACTED] interviewed the Appellant via telephone regarding suspected IPV violations of the FSP program. During the interview, the Appellant informed the Investigator that she would sometimes send leftover food to relatives, and give them uncooked food items from her freezer, purchased with her EBT card.
36. During the interview with the OIG investigator, the Appellant acknowledged that she routinely visited her sister in [REDACTED] and purchased food items for her children and left the items for the children when the children had extended visits in [REDACTED]
37. The Appellant has no prior FSP IPV's.

DISCUSSION

Intentional Program Violation (IPV)

An IPV is an intentionally false or misleading statement or misrepresentation, concealment, or withholding of facts concerning the FSP or any act that constitutes a violation of the FSP, the FSP regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of FSP benefits.³ 7 C.F.R. § 273.16(c) (2018); *see also* COMAR 07.03.10.02B(5). Federal regulations set out the criteria for states to engage in administrative

³ The federal regulations that apply to the FSP are found in Title 7 of the Code of Federal Regulations (C.F.R.).

disqualification hearings for an IPV. *See* 7 C.F.R. § 273.16(a). Maryland’s regulations outline that a local department “shall investigate and refer any suspected cases of an IPV for an administrative disqualification hearing” in accordance with COMAR 07.03.10, which establishes the procedures to be used by the local department to disqualify individuals from the FSP when there is sufficient evidence to substantiate the decision that the individual has committed an IPV. COMAR 07.03.17.56; COMAR 07.03.10.01.

The State regulations provide that a local department “shall investigate and refer any suspected cases of an IPV for an administrative disqualification hearing” in accordance with COMAR 07.03.10. COMAR 07.03.17.56. Maryland regulations establish the procedures to be used by the DHS to disqualify individuals from the FSP when there is sufficient evidence to substantiate the decision that the individual has committed an IPV of the FSP. COMAR 07.03.10.01. Federal regulations set out the criteria for states to engage in Administrative Disqualification Hearings for an IPV of the FSP. *See* 7 C.F.R. § 273.16(a).

FSP Trafficking

Trafficking in FSP benefits is an IPV. “Trafficking” includes the “[b]uying or selling of [FSP] benefits for cash or consideration other than eligible food.” COMAR 07.03.17.02B(29)(a); *see also* 7 C.F.R. § 271.2. FSP benefits may only be used “to purchase eligible foods” or “to enable the household to participate in a nonprofit cooperative or a meal service.” COMAR 07.03.17.57B.

Burden Standard

At the ADH, the Local Department bears the burden of proving an IPV by clear and convincing evidence that the Appellant participated in FSP trafficking, which is an IPV in and of itself, and that she committed the additional IPV violations not related to trafficking. COMAR 07.01.04.12A, C(1); *see also* 7 C.F.R. § 273.16(e)(6) (2018). This standard is more demanding than the “preponderance of the evidence” (more likely than not) standard but is not as onerous as the “beyond a reasonable doubt” standard. *See Berkey v. Delia*, 287 Md. 302, 319-20 (1980).

If the Local Department meets its burden, the individual who committed the IPV (not the entire household) shall be disqualified for one year for the first violation, two years for the second, and permanently for the third. COMAR 07.03.10.08B, C; *see also* 7 C.F.R. § 273.16(b)(1), (11).

IPV Violations Not Related to Trafficking

The Local Department alleged that the Appellant committed an IPV of the FSP by purchasing food for relatives, giving relatives food from her freezer and supplying relatives with food purchased on her EBT card. The Appellant disputed these assertions. I did not find the Appellant credible for the following reasons. The Appellant testified that she sometimes had an unusually large food bill because she buys in bulk, cooks a lot of “██████████ food” and asserted the food is expensive. However, when interviewed by the OIG investigator via telephone in November 2018, she informed the investigator that she routinely gave her relatives food that was both cooked and frozen. The Appellant clarified at the hearing that what she meant to say was that she allowed her relatives to take the cooked leftovers if they had been invited for dinner. I do not believe the Appellant because she insisted that she routinely purchased bulk items from ██████████ but the store does not sell bulk items. I meticulously read the General Store Information concerning the specifications for ██████████ and the store does not sell items in

bulk, which is exactly what Ms. [REDACTED] testified to.⁴ Additionally, Ms. [REDACTED] indicated she was very specific in her interview with the Appellant. Ms. [REDACTED] testified regarding the Appellant's responses and drafted a written report. In the report Ms. [REDACTED] indicated the Appellant reported that she bought food in bulk and prepared the food for relatives and gave her relatives unprepared food. I was not presented with any reason or motive to suggest Ms. [REDACTED] would fabricate these assertions. For these reasons, I believe Ms. [REDACTED]'s testimony over that of the Appellant. Indeed, this could explain why the Appellant's food bill often surpassed the average SNAP transactions at [REDACTED] because she sometimes purchased food items for persons other than herself and her children. This is of particular importance since the Appellant did the majority of her food shopping at [REDACTED]. The Appellant was informed in writing multiple times, that she could not let other persons use her FSP benefits. Even though the Appellant acknowledged she was given a pamphlet which explains how to use the EBT card to utilize the benefits, the Appellant testified that she did not read the pamphlet. Even if the Appellant did not read the pamphlet, which is no excuse for being uninformed of her responsibilities, she signed her initial application and subsequent redeterminations which clearly enumerate her responsibilities regarding her FSP benefits.

With regard to EBT purchases in [REDACTED] the Appellant explained that she routinely visited her sister. The Appellant claimed that she purchased food items for her children when they visited during the summer. The Appellant was within her right to do so as long as the food items were not purchased for other members of the sister's household. Nevertheless, based on the above-cited reasons, I conclude that the local department met its burden with regard to an IPV because the Appellant purchased food for relatives and gave relatives unprepared food from her freezer purchased on her EBT card.

⁴ I will address the buying in bulk more extensively below as it relates to trafficking.

Trafficking of FSP

The transactions log regarding the Appellant's use of her EBT card at [REDACTED] during the period from November 2013 through October 2017 provides clear evidence of trafficking. LD Ex. #1. According to the undisputed documents in evidence, a SNAP inspector visited the store during the affected period, taking photographs and writing a description and diagram of the premises. These documents depict a small establishment with reasonably well-stocked shelves, a reach-in refrigerator and refrigerator/freezer sections. The store carries some fresh produce, frozen chicken, dairy products and eggs, meat, canned and bottled drinks, breads and cereals, rice and pasta, and a typical selection of other groceries and household items. The store has fewer than ten carts and shopping baskets and two optical scanners. The check-out counter is not behind a barrier, has two cash registers, and two EBT terminals. The store has no storage area out of public view, does not sell hot food or food for on-site consumption, and does not sell food in bulk.

Despite [REDACTED]'s variety of goods, the FNS determined that, because of the store's small size, limited stock and pricing, any EBT transaction of more than \$37.00 would be unusual and excessively large. Although one could buy more than \$37.00 worth of groceries at this establishment, the Store Survey and photographs in evidence indicate that [REDACTED] is a small convenience store where a customer is not likely to do all of his or her grocery shopping. Even if I believe the Appellant that she sometimes purchased expensive food items, it is simply not believable that at this small grocery store, which did not sell bulk items, the Appellant would have multiple, double digit purchases ranging from \$110.00 to as much as \$583.00 in short periods of time. For example, a detailed review of the SNAP Trafficking Transaction Log indicates that between June 10, 2015 and September 14, 2015, the Appellant spent over \$2,136.00 in less than three months at [REDACTED]. Additionally, as indicated-above, [REDACTED]

█ does not sell bulk items and the Appellant vehemently insisted that it did, which was the paramount for her unusually high food bill for a family of one adult and █ children.

However, the Appellant could not provide any evidence to corroborate her self-serving assertions and the Local Department provided a very detailed description of █ with pictures to corroborate its assertion that █ did not sell bulk items.

The Local Department submitted the FSP applications that were signed and dated by the Appellant for the affected period. As indicated-above, the Appellant also received an EBT Pamphlet together with her initial EBT card. These applications and EBT Pamphlet demonstrate that the Appellant was notified in writing on numerous occasions of the rules and requirements of the FSP program and of the prohibitions against trading or selling FSP benefits or EBT cards, as well as purchasing items not authorized by the FSP. The Appellant was also notified of the sanctions for violating FSP rules and received adequate advanced notice of the FSP rules, prohibitions, and sanctions before receiving FSP benefits. The local department could not have issued FSP benefits and an EBT card to the Appellant without her first filing an FSP application and receiving an EBT Pamphlet, which included the rules, prohibitions, and sanctions of the FSP program.

I conclude that the evidence presented by the DHS, including the documents and testimony from the OIG's investigator, establishes by clear and convincing evidence that the Appellant's EBT card was used to traffic in FSP benefits at █ during the period from November 2013 through October 2017. The evidence demonstrates that the Appellant's EBT card was active throughout the period of her suspicious transactions. Therefore, I conclude that the DHS has presented clear and convincing evidence that the Appellant is responsible for trafficking in FSP benefits and that she committed an IPV.

I conclude that after analyzing both cases, the Appellant's actions constitute IPV violations. This is the Appellant's first IPV of the FSP. The Local Department requested that even though the Appellant has two cases of IPV's, the violations occurred for one affected period, and therefore, she should only be disqualified for one year.

CONCLUSIONS OF LAW

I conclude, as a matter of law that the Local Department has established by clear and convincing evidence that the Appellant committed IPV violations of the FSP for one affected period, highlighted in two cases. COMAR 07.01.04.12C(1). I further conclude, as a matter of law, that the Appellant (not her entire household) is disqualified from participation in the FSP for one year. COMAR 07.03.10.08B(1).

ORDER

I **ORDER** that the Appellant is found to have committed IPV violations of the FSP. Therefore, the Local Department is granted leave to impose a one year FSP disqualification against the Appellant only.

February 1, 2019
Date Decision Issued

Signature Appears on Original

Jerome Woods, II
Administrative Law Judge

JW/ej
#178001

REVIEW RIGHTS

This is the final decision of the Department of Human Services. A party aggrieved by this final decision may file a petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county in which any party resides or has a principal place of business. The petition must be filed within thirty (30) days of the date of this decision. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2018); Md. Rules 7-201 through 7-210. A petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

[Redacted]

[Redacted]

[Redacted]

[Redacted] (Emailed)

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