

[REDACTED]

* BEFORE JOHN T. HENDERSON, JR.

[REDACTED]

* ADMINISTRATIVE LAW JUDGE

v.

* THE MARYLAND OFFICE

[REDACTED]

* OF ADMINISTRATIVE HEARINGS

APPELLANT

* OAH No.: DHS-[REDACTED] 56-18-23337

* * * * *

DECISION

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STATEMENT OF THE CASE

On June 29, 2018, the Department of Human Services (DHS), Office of the Inspector General (OIG), notified the Appellant¹ that it determined she had committed an Intentional Program Violation (IPV) of the Food Supplement Program (FSP or SNAP) by engaging in trafficking activity at [REDACTED] ([REDACTED]), located at [REDACTED] [REDACTED] Maryland [REDACTED] during the months of March 2011 through December 2017.

The OIG further notified the Appellant that it was referring the matter to the Office of Administrative Hearings (OAH) for an Administrative Disqualification Hearing (ADH). 7 Code of Federal Regulations (C.F.R.) § 273.16(e)(3) (2018).² The DHS further informed the Appellant that she could waive her right to an ADH and accept a disqualification from the FSP.

¹ "Appellant" means an applicant, recipient, or other individual who is, among other things, the subject of an IPV proceeding. Code of Maryland Regulations (COMAR) 07.01.04.02B(3)(b).
² The federal regulations that apply to the FSP are found in Title 7 C.F.R. Unless otherwise noted, all citations herein to the C.F.R. are to the 2018 volume.

- DHS Ex. 3 SNAP Trafficking Transaction Log, for the period of March 17, 2011 through December 21, 2017; FNS Trafficking Definitions, as of March 23, 2017
- DHS Ex. 4 Electronic Benefit Transfer (EBT)³ card issuance history & transaction records
- DHS Ex. 5 Appellant's SNAP application, January 9, 2013; redetermination applications, July 19, 2013, December 30, 2013, July 15, 2015, July 12, 2016, July 18, 2016, December 7, 2016, May 4, 2017, November 13, 2017; Mail-in Benefits Review Forms, January 2, 2014, January 5, 2015, January 13, 2016; SAIL Program Application, September 16, 2014; letter from the DHS to the Appellant, June 23, 2015; Voter Registration Agency Certification, July 18, 2016; Rights and Responsibilities, unsigned and undated; Request for Reasonable Accommodation
- DHS Ex. 6 CARES screen-prints; MVA address records
- DHS Ex. 7 Letter from DHS to the Appellant, June 29, 2018; Advanced Notice of ADH, June 29, 2018; Waiver of ADH, June 29, 2018; OIG letters to customer, undated
- DHS Ex. 8 Letter from DHS to OAH, undated; Appellant's Request for Hearing, July 18, 2018; letter from DHS to the Appellant, June 6, 2018; OIG correspondence with OAH, undated

The Appellant did not offer any exhibits into evidence.

Testimony

██████████ OIG Investigator, testified on behalf of the DHS. The Appellant testified on her 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.
2. The Appellant filed an initial application with the DHS for FSP benefits for a

household of ██████████ (herself and ██████████ children) in 2009. The application was approved. The DHS

³ "The Maryland EBT card stands for Electronic Benefit Transfer card. Claimants are able to use these cards to access their program funds and purchase groceries for their families." <https://foodstamps.org/maryland> (Last viewed on October 30, 2018.)

issued the Appellant an EBT card on April 15, 2009 that she could use to purchase permitted FSP items, or to participate in a nonprofit cooperative, or a meal service. The EBT card remained active until February 21, 2018, when she reported it lost.

3. The Appellant filed redetermination applications and review forms for FSP on the following dates:

July 19, 2013
December 30, 2013
January 2, 2014
September 16, 2014
January 5, 2015
July 15, 2015
January 13, 2016
July 12 and 18, 2016
December 7, 2016
May 4, 2017
November 13, 2017

4. The redetermination applications and review forms filed by the Appellant for FSP benefits contained descriptions of the civil and criminal penalties for violations of the FSP. Those documents set forth the Appellant's responsibilities as an FSP recipient and the penalties to be imposed if the Appellant intentionally violated the rules of the FSP.

5. By completing and signing the FSP application and redetermination applications, the Appellant acknowledged that she had read and understood the documents and agreed to comply with the requirements of the FSP.

6. A DHS brochure entitled "Maryland EBT" (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 and cash benefits. The EBT Pamphlet warns recipients that defrauding the system or selling an EBT card and personal identification number (PIN) to others is a crime.

7. The EBT Pamphlet warns recipients that if an IPV is determined to have 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.

8. The Appellant received the EBT Pamphlet along with her EBT card.

9. The United States Department of Agriculture (USDA) Food and Nutritional Services (FNS) investigated transactions at [REDACTED] a small convenience store in [REDACTED] [REDACTED] Maryland during the months of March 1, 2011 through December 31, 2017.

10. [REDACTED] has less than ten shopping carts and less than ten shopping baskets.

11. [REDACTED] is a small convenience store within a commercial, suburban shopping center. It sells milk, but no other dairy products; limited amounts of fresh fruits and produce; frozen and canned fish, meats, fruits and vegetables; some breads, cereals, snacks and household items. It does not sell hot food or food for onsite consumption.

12. [REDACTED] has two EBT points of sale devices and two cash registers with optical scanners.

13. Purchases in the amount of \$37.00 or more are considered excessively large purchases from [REDACTED]

14. The FNS investigation of [REDACTED] determined that the store's average FSP/SNAP daily transaction from March 1, 2011 through December 31, 2017 was \$61.05.

15. On November 14, 2017, FNS disqualified [REDACTED] as a SNAP participant due to trafficking behavior.

16. The DHS investigated the Appellant's transactions at [REDACTED] between March 2011 and December 2017.

17. The Appellant made 107 EBT transactions at [REDACTED] from March 17, 2011 through December 21, 2017 where eighty-six out of 107 being over \$37.00 or more each day.

Fifty-Seven of the transactions totaled \$200.00 or more. The largest transaction was \$517.80 made on [REDACTED] 2017 at [REDACTED] PM. The Appellant also had twenty-three transactions close in time on a single day. (DHS Ex. 3, pgs. 27-31.)

18. The Appellant purchased SNAP items from [REDACTED] on credit.

DISCUSSION

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. 7 C.F.R. § 273.16(c); *see also* COMAR 07.03.10.02B(5). Federal regulations set forth the criteria for states to engage in an ADH 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 a 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.

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(1). 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.

At the ADH, the DHS bears the burden of proving an IPV by clear and convincing evidence. 7 C.F.R. § 273.16(e)(6); *see also* COMAR 07.01.04.12A, C(1). 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 DHS 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. 7 C.F.R. § 273.16(b)(1), (11); *see also* COMAR 07.03.10.08B, C.

For the reasons that follow, I conclude that the DHS has met its burden of showing by clear and convincing evidence that the Appellant committed an IPV by trafficking in FSP benefits. 7 C.F.R. § 271.2(1); *see also* COMAR 07.03.17.02B(29)(a).

The Department presented a log setting forth the Appellant’s transactions at [REDACTED] that fit within the confines of the types of transactions that the FNS consider to be suspicious for trafficking. The log showed the Appellant’s suspicious transactions between March 17, 2011 and December 21, 2017. The log showed a pattern of excessively large transactions for a store of that size and repeated transactions on the same day. The FNS considers these types of transactions to be suspicious for trafficking.

According to the documents in evidence, an inspector visited [REDACTED] during the investigation and wrote a description and diagram of the premises. These documents depict a small convenience store type of establishment within a commercial, suburban shopping center. [REDACTED] carries some milk, but no other dairy products; limited amounts of fresh fruits and produce; frozen and canned fish, meats, fruits and vegetables; some breads, cereals, snacks and household items. It has less than ten shopping baskets or carts. It has two EBT points of sale devices and two cash registers with optical scanners. It does not sell hot food or food for onsite consumption. (DHS Ex. 1, pg. 12.) The FNS determined that based on a history of [REDACTED]’s customer transactions, any EBT transaction over \$37.00 is considered to be excessively large.

On November 14, 2017, the FNS advised [REDACTED] that it had evidence that the store violated SNAP regulations because the store's average FSP/SNAP daily transaction from March 1, 2011 through December 31, 2017 was \$61.05, double the amount it considered to be excessively large. As a result, it charged [REDACTED] with trafficking during the months of September 2016 through February 2017. FNS advised [REDACTED] that it would permanently disqualify it as a SNAP participant as well as seek additional financial penalties.

The FNS Investigation Report, including the Trafficking Profiles, established that the FNS considers the Appellant's transactions at [REDACTED] to fit the profile for trafficking. There was no evidence to suggest that anyone other than the Appellant used or had access to her EBT card.

The Appellant had 107 transactions during the investigation period with eighty-six out of the 107 being over \$37.00. Fifty-Seven of the transactions totaled \$200.00 or more. The largest transaction was \$517.80 on [REDACTED] 2017 at [REDACTED] PM. Further, the Appellant had twenty-three transactions close in time on a single day. (DHS Ex. 3, pg. 27-31.) The Appellant's large transactions exceed the amount an individual would or could spend at [REDACTED] given the size of the store and the products sold therein.

Ms. [REDACTED] testified for the DHS. According to her, the Appellant committed an IPV because the evidence suggests that the Appellant was selling her card at a discount, exchanging it for cash, purchasing items not SNAP eligible and paying her SNAP tab on credit. The DHS, through Ms. [REDACTED] relied heavily on its exhibits admitted into evidence to draw conclusions that the Appellant committed an IPV.

The Appellant testified that she did not commit an IPV; and that she purchased bulk items from [REDACTED] to feed her [REDACTED] daughters, ages, eighteen, fifteen, thirteen and six, as well as herself. She explained the days of multiple transactions occurred due to her returning into the store while she waited for a ride to return home, because she forgot an item she wanted. She

denied allowing anyone else use of the EBT and denied involving herself in a scheme to use the EBT to receive cash.

The Appellant's testimony did not rebut the documentary evidence that clearly showed patterns of EBT transactions that identified fraud activity. The Appellant's explanations did not refute any evidence of the DHS. Therefore, I conclude that the DHS provided clear and convincing evidence that the Appellant engaged in trafficking at [REDACTED]. This is the Appellant's first intentional violation of the FSP. Accordingly, she is disqualified from receiving FSP benefits for one year. 7 C.F.R. § 273.16(b)(1)(i); *see also* COMAR 07.03.10.08B(1).

CONCLUSIONS OF LAW

I conclude, as a matter of law, that the Department of Human Services has shown by clear and convincing evidence that the Appellant committed a first IPV of the FSP. 7 C.F.R. § 273.16(e)(6); *see also* COMAR 07.01.04.12C(1); COMAR 07.03.10.02B(5). I further conclude that the Appellant is disqualified from participation in the FSP for one year. 7 C.F.R. § 273.16(b)(1)(i), (11); *see also* COMAR 07.03.10.08B(1).

ORDER

I **ORDER** that the Appellant is found to have committed an IPV of the FSP. Therefore, the Department of Human Services shall impose a one year FSP disqualification against the Appellant only.

November 2, 2018
Date Decision Issued

Signature Appears on Original

[REDACTED]
John Ψ. Henderson, Jr.
Administrative Law Judge

JTH/emh
#176681

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:

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