

MAR 13, 2023 04:41 PM

Nancy Pittman
Nancy Pittman, Clerk
Toombs County, Georgia

IN THE SUPERIOR COURT OF TOOMBS COUNTY

STATE OF GEORGIA

S. [REDACTED] W. [REDACTED],
Petitioner.

vs.

CANDICE L. BROCE,
COMMISSIONER, DEPARTMENT OF
HUMAN SERVICES,
Respondents.

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§ CASE NO. [REDACTED]
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§ Petition for Judicial Review
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RULING AND ORDER

Petitioner S. [REDACTED] W. [REDACTED] filed a Petition for Judicial Review with this Court on May 9, 2018, appealing the decision of the Administrative Law Judge (ALJ) of the Office of State Administrative Hearings (OSAH) disqualifying W. [REDACTED] from the Food Stamp Program. Following a hearing on March 21, 2017, the ALJ determined that W. [REDACTED] had committed an Intentional Program Violation (IPV) by misusing food stamp benefits and receiving an overpayment of \$5,098. After exhausting all administrative remedies, W. [REDACTED] filed the present petition with this Court.

The superior court's evidentiary review of an agency decision under the Administrative Procedure Act (APA) is not *de novo*. Georgia Dep't of Agric. v. Brown, 270 Ga. App. 646, 649, 607 S.E.2d 259, 262 (2004). Instead, the court will apply the "clearly erroneous" standard of review "leaving only a determination of whether the facts found by the [administrative agency] are supported by any evidence." Blue Cross & Blue Shield of Georgia, Inc. v. Deal, 244 Ga. App. 700, 703, 536 S.E.2d 590, 593 (2000). "Judicial review of an administrative decision requires the court to determine that the findings of fact are supported by 'any evidence' and to examine the soundness of the conclusions of law that are based upon the findings of fact." (Citation omitted.) Charles v. Butler, 331 Ga. App. 336, 336, 771 S.E.2d 43, 44 (2015). Any evidence is evidence that is sufficient to support the agency's factual findings, particularly in light of the proper standard of review, which is to determine whether any evidence supports the agency decision. Georgia Dep't of Agric., 270 Ga. App. at 650. Thus, the court's review shall be confined to the record and it shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. O.C.G.A. § 50-13-19 (g) and (h).

The present case arose following an Electronic Benefits Transfer (EBT) card fraud investigation of the Santa Claus Mini Mart (SCMM) by the U.S. Department of Agriculture's Food and Nutrition Service (FNS), the federal agency that funds the Food Stamp Program and provides regulation and oversight to each state.¹ FNS opened its investigation of SCMM when it noticed signs

¹This Court adopts the facts in the record.

of potentially fraudulent EBT activity at the store to include a large amount of monthly EBT transactions totaling 10 times the dollar amount of other nearby convenience stores while at the same time lacking the kind inventory typically required for a customer to make a large food purchase.

FNS reviewed SCMM's EBT transactions for the period from January 2014 to June 2014. A FNS reviewer visited the store on June 17, 2014, to photograph the store and the items for sale. There were no large freezers, no meat or seafood, no food specials, no shopping carts, and fewer than 10 shopping baskets.² Following its investigation, FNS disqualified the store for trafficking in EBT benefits.

FNS then referred the investigation of the EBT cardholders to the Georgia Department of Human Services (DHS), Office of Inspector General (OIG), to identify any cardholders who made suspicious EBT transactions at SCMM. Because SCMM's owner had been murdered in front of the store in June 2014, the OIG could not interview him or conduct an onsite inspection. Instead, OIG relied on records from the DHS' Division of Family and Children Services (DFCS) and the SCMM investigation binder created by the FNS inspector.

OIG's agents investigated all EBT transactions made at SCMM between July 2010 and March 2015 and compared them to FNS' criteria for Fraud Prone Patterns. These fraud patterns could indicate that a householder had used his or her EBT card to obtain cash or other ineligible items. The agents determined that W■■■■' EBT activity exhibited some of these fraudulent patterns to include repeated transactions occurring too rapidly after the prior transaction to be a legitimate food purchase and excessively large transactions based on the size and nature of the store's operation.³ In all, the agents determined that W■■■■ made 19 purchases at SCMM that fit the criteria for EBT trafficking rounding to a total of \$5,098. OIG filed an action to administratively disqualify W■■■■ from participating in the Food Stamp Program and to collect the trafficked amount from her household.

Prior to the hearing, W■■■■ filed a Motion in Limine to exclude the "Summary of Santa Claus Mini Mart" and "Fraud Prone Patterns" documents listed as Exhibits 4 and 7, respectively, in FNS' Santa Claus Binder. The ALJ also orally denied the motion from the bench during the hearing. The ALJ determined both were admissible as public records under O.C.G.A. § 24-8-803(8) and also under the residual hearsay rule, O.C.G.A. § 24-3-807. See Administrative Hearing Record, filed June 4, 2018. The parties were also allowed to submit post-hearing briefs challenging the admissibility of each challenged exhibit.

In W■■■■' Brief in Support of Judicial Review filed with this Court on July 22, 2022, W■■■■ contends that the ALJ's findings of fact were either not supported by the record in evidence

²Conversely, W■■■■ averred in her affidavit that she would buy groceries at SCMM because it was near her home and that she had been childhood friends with SCMM's owner and he gave her discounts on meat.

³Dana Manders, the Section Manager for the Benefit Integrity and Recovery Unit of OIG, instructed her agents to look at transactions greater than \$150 as potentially fraudulent.

or based upon inadmissible evidence. Specifically, W [REDACTED] argues that the contents of the binder are inadmissible hearsay because “this binder was prepared for every case in which the OIG sought an administrative disqualification hearing.” Although OIG used the information contained in the binder at its hearings, the binder was not prepared for that purpose. Rather, FNS prepared the binder to memorialize its investigation of SCMM.

O.C.G.A. § 24-8-803(h) provides a hearsay exception for public records, reports, statements, or data compilations, in any form, of public offices, setting forth:

- (A) The activities of the public office;
- (B) Matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, against the accused in criminal proceedings, matters observed by police officers and other law enforcement personnel in connection with an investigation; or
- (C) In civil proceedings and against the state in criminal proceedings, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness[.]

Although Exhibits 4 and 7 lack proper authentication markings and do not contain the names of their authors, they tend to repeat and/or summarize the information contained in the Santa Claus Binder. In fact, Exhibit 4 is a brief summary of the information contained within Exhibit 3. Exhibit 3 is labeled as an FNS Survey Form for use by FNS authorized agents. Exhibit 3 was not listed on Respondent’s Motion in Limine but seems to be the type of form an FNS investigator would use when performing his or her duties and is therefore permissible under O.C.G.A. § 24-8-803(h)’s exception.

Additionally, the Georgia Administrative Code provides,

[t]he [administrative] Court shall apply the rules of evidence as applied in the trial of civil nonjury cases in the superior courts and may, when necessary to ascertain facts not reasonably susceptible of proof under such rules, consider evidence not otherwise admissible thereunder if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs[.]

Ga. Comp. R. & Regs. 616-1-2-.18. Therefore, even if it could be determined that the FNS products contained within the Santa Claus binder did not fall within a hearsay exception, the administrative code would still make the documents therein admissible so long as they are of a type commonly relied upon by reasonably prudent OIG agents in the conduct of their affairs.

For these reasons, Exhibits 4 and 7 as well as the rest of FNS investigation binder were admissible evidence for the administrative hearing. Further, the ALJ explained in his final decision, “[T]he weight given to each exhibit is much less than if [OIG] had produced an FNS employee to testify regarding the procedures followed in creating the summary found in Exhibit 4 and to provide the practical and statistical rationale for the fraud-prone patterns of EBT trafficking contained in Exhibit 7.” Administrative Hearing Record.

At the hearing, OIG presented the testimonies of the OIG case agent, Charlene Benn, and her section manager, Dana Manders. Manders testified that she did not rely on FNS' conclusions when making her determinations because FNS' conclusions related to the store and her findings related to the individual cardholders. Brief in Opposition to Petition for Judicial Review, filed December 16, 2022. Rather, Manders relied upon her experience and relevant data to conclude that Wilkes trafficked her benefits. Benn also testified that W[REDACTED]' EBT activity at SCMM fit the pattern of fraudulent activity. W[REDACTED] was unavailable to testify at the hearing but provided an affidavit. W[REDACTED] also presented Georgetown professor David Super, as her expert witness. OIG also provided provided the ALJ with the Santa Claus binder along with Investigator Benn's affidavit.

After reviewing the evidence and testimony presented at the hearing as well as the post hearing briefs, the ALJ concluded that OIG had shown by clear and convincing evidence that W[REDACTED] had engaged in EBT trafficking. Because W[REDACTED] was a first offender, W[REDACTED] was disqualified from participation in the Food Stamp Program for twelve months and ordered to repay the overissuance of 5,098.

In her brief to this Court, W[REDACTED] argues that OIG did not meet its burden of proving by clear and convincing evidence that she had committed an IPV by misusing her food stamp benefits. Brief in Support, pp. 21-23. Because this Court is simply reviewing the agency's decision, the standard is lowered from "clear and convincing evidence" to "any evidence." When applying the "any evidence" standard of review, this Court must determine whether any evidence supported the agency's decision. After applying the any evidence standard of review, this Court has determined that the evidence presented sufficiently enabled the ALJ to determine that W[REDACTED] had committed EBT fraud.⁴

Accordingly, the Administrative Law Judge's decision is hereby **AFFIRMED**.

SO ORDERED, this 8th day of March, 2023.



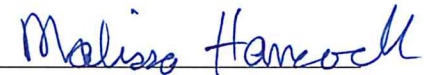
ROBERT S. REEVES, JUDGE
Toombs County Superior Court
Middle Judicial Circuit

⁴If this hearing was transcribed, neither party filed a copy of the transcript with this Court. Thus, when applying the "any evidence" standard, this Court relies upon the evidence filed by the parties in the superior court case.

CERTIFICATE OF SERVICE

I, Malissa Hancock, Judicial Assistant to Judge Robert S. Reeves, do hereby certify that I have this day filed the foregoing document using the PEACHCOURT electronic filing system, which will automatically send an email notification of such filing to all parties and/or attorneys of record that have previously e-filed in this case.

This 13th day of March, 2023.


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