

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**DEPARTMENT OF HUMAN
SERVICES, OFFICE OF INSPECTOR
GENERAL,
Petitioner,**



FILED
OSAH

APR 04 2018

v.

**S [REDACTED] S [REDACTED],
Respondent / Head of Household.**

Meredith Spears

Meredith Spears, Legal Assistant

FINAL DECISION

I. Introduction

This case concerns Petitioner's action to administratively disqualify Respondent from participation in the Supplemental Nutritional Assistance Program ("SNAP"), more commonly referred to as the Food Stamp Program. Petitioner also seeks to collect an overissuance of benefits from Respondent's household based on an alleged trafficking of Food Stamp benefits.

This matter came on for hearing before the undersigned Administrative Law Judge ("ALJ") at Toombs County Courthouse in Lyons, Georgia. Petitioner was represented by David E. Laesser, II, Attorney at Law, Claxton, Georgia, appearing as a Special Assistant Attorney General. Respondent was represented by Nancy deVetter, Attorney at Law, Georgia Legal Services Program, Savannah Regional Office.

For the reasons stated herein, Petitioner's decision to administratively disqualify Respondent from Food Stamp Program participation and to assess and collect an overissuance of benefits is **AFFIRMED. Respondent is disqualified from participation in the Food Stamp Program for 12 months, and her household is required to repay the overissuance of \$2,071.00.**

II. Ruling on Respondent's Motions regarding Petitioner's Trial Exhibits

Respondent filed a Motion in Limine objecting to admissibility of exhibits tendered by Petitioner that are contained in a large trial notebook prepared by Petitioner's agents following the investigation of Santa Claus Mini Mart (this notebook is referred to as the "Santa Claus Binder" in this Decision).

Respondent's motion was denied in a written Order issued by the Administrative Law Judge ("ALJ") prior to the evidentiary hearing, and again from the bench during the hearing. Both exhibits were admitted into evidence. The ALJ allowed the parties to submit post-hearing briefs addressing admissibility of each challenged exhibit, among other issues.

Respondent seeks a ruling that the following exhibits must be excluded from evidence:

Petitioner Exhibit 4- General store information regarding Santa Claus Mini Mart prepared by the United States Department of Agriculture's Food and Nutrition Services ("FNS"). Respondent's objection is based on hearsay, as the individual or individuals at FNS who

prepared the document were not present to authenticate the exhibit or to be cross-examined as to the exhibit's contents and accuracy, and on relevance, as the information was gathered after the dates that Respondent allegedly trafficked in Food Stamps. Respondent requested the identity of the person or persons who prepared the report, but Petitioner refused to release that information. Petitioner argued that this exhibit did not constitute the entire investigation into the business operations of Santa Claus Mini Mart or the Respondent, but did provide the agents employed by the state with information needed to initiate their investigation. The state agents conducted or attempted to conduct interviews with each individual accused of "Electronic Benefits Transfer" card ("EBT") EBT fraud, from which it further developed a history of the store's operations and how it conducted fraudulent activity regarding individual's EBT cards.

Petitioner Exhibit 7- Fraud-prone patterns used by Petitioner to determine whether trafficking of Food Stamp benefits occurred. This objection was based on hearsay grounds, as the person or persons who drafted these patterns were not present in court for examination. Respondent presented lengthy a testimony from Professor David Super of Georgetown Law Center. Dr. Super testified that the fraud-prone patterns were intended for use against stores accused of trafficking in Food Stamps, and not against individual Food Stamp recipients. Dr. Super testified that there is little or no statistical evidence to verify that the patterns reliably show that an individual committed EBT fraud. Petitioner argued that Dr. Super's statistical analysis was flawed, as he did not base his conclusions on the investigation of this store or this set of Respondents. Further, Petitioner argued that Dr. Super's testimony should be ignored, or at least minimized, due to his long history of acrimony against how Petitioner operates its Food Stamp Program.

The ALJ has carefully considered the parties' arguments regarding these two exhibits, and confirms his bench ruling that each was admissible under O.C.G.A. § 24-8-803(8) as a Public Record, and also under the Residual Hearsay rule found at O.C.G.A. § 24-8-807. However, the weight given to each exhibit is much less than if Petitioner 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.

III. Ruling on Respondent's Motion to Dismiss based on Timeliness of the Disqualification Hearing

7. C.F.R. Part 273.16(e)(2)(iv) provides that the hearing shall be held and the issues decided within 90 days of the date the household is notified of the proposed disqualification. There is no question that the initial hearing date was scheduled well beyond the 90 day deadline. This delay was due to the administrative difficulties encountered by Office of State Administrative Hearings in receiving, processing, scheduling, and issuing hearing notices for more than 500 cases. Further, additional delay was caused by Respondent requesting a continuance from the initial hearing date, and medical issues encountered by representatives and witnesses of both parties. For these reasons, Respondent's Motion to Dismiss the disqualification hearing must be denied.

IV. Findings of Fact

The undersigned Administrative Law Judge considered all evidences presented by both parties, although not all facts are included herein as specific findings of fact.

(a) Summary of Santa Claus Mini Mart Investigations by FNS and OIG

1. The Georgia Department of Human Services, Division of Family and Children Services (“DFCS”) is the State agency responsible for determining eligibility for Food Stamps and issuing benefits to each eligible household. The U.S. Department of Agriculture, Food and Nutrition Service (“FNS”) is the Federal agency that funds the Food Stamp Program and provides regulation and oversight to each state. The Office of the Inspector General (“Respondent” or “OIG”) is the division within the Department of Human Services which is responsible for investigating allegations of fraud and abuse in the Food Stamp Program, including allegations that a household trafficked in Food Stamp benefits.

2. Each eligible household in Georgia is issued an EBT card, which is used to purchase eligible food items. DFCS has contracted with an outside vendor, which records the total amount of transactions made using the EBT card and location of the store. The vendor can provide records showing all the purchases made at an individual store through an identification number assigned to each household. (Testimony of Melissa Holnes, OIG Agent; Santa Claus Binder, Exhibits 9, 10).

3. Santa Claus Mini Mart is located at 1425 U.S. Highway South, just outside Lyons, Toombs County, Georgia. Chris Wiggins was the store’s owner when it began operations in July 2010. The store began accepting EBT cards that same month. Between July 2010 to March 2015, Santa Claus Mini Mart had 43,358 EBT transactions totaling \$3,258,517.38. Only 4,270 transactions were keyed, while the remainder of 39,088 transactions were completed by swiping the EBT card. FNS’s investigation revealed that the store was 2,250 square feet in size. The posted store hours were 6:00 a.m. to 10:00 p.m., seven days per week. There was no optical scanner at the checkout, with two cash registers and one electronic point-of-sale device. There were no shopping carts that customers could use to make large food purchases, and fewer than ten shopping baskets were available. According to the FNS report, no meat or seafood was sold, and there were no food specials or bundles for sale. Ineligible food items including pizza, chicken, nachos, and hot dogs were for sale. The FNS report stated that there was no food stored out of public view, and the store did not operate a delivery route, farmer’s market, or sell specialty food items. FNS determined that there were at least 25 stores that accepted EBT cards operating within five miles of Santa Claus Mini Mart, and that the store often had monthly EBT transactions of more than ten times the dollar amount of nearby convenience stores. (Testimony of Melissa Holnes; Santa Claus Binder, Exhibits 1, 2, 3, 4, 5).

4. FNS reviewed the store’s EBT transactions for the period from January 2014 to June 2014. An FNS reviewer visited the store on June 17, 2014, and photographed the store’s physical appearance and food items for sale. Following its investigation, FNS disqualified the store for trafficking in EBT benefits. Tragically, Mr. Wiggins was murdered outside his store in June 2014, and there is no information from Mr. Wiggins regarding how EBT transactions were handled. (Testimony of Dana Manders, OIG Manager; testimony of Melissa Holnes; Santa Claus Binder, Exhibits 1, 2, 4).

5. FNS referred the investigation of those households who made suspicious EBT transactions at Santa Claus Mini Mart to Petitioner. By this time, Chris Wiggins had died, and Petitioner’s agents were unable to conduct an on-site inspection of the store as it was operated under Wiggins’ ownership. OIG relied instead on the records maintained by DFCS’ vendor and copious documents obtained or produced by FNS. These included photographs inside the store by the FNS inspector, which show a relatively small amount of food items on the shelves or in coolers. (Testimony of Agent Holnes; testimony of OIG Manager Manders; Santa Claus Binder, Exhibits 1, 2, 3, 4).

6. Petitioner instructed its agents to investigate all EBT transactions made at Santa Claus between July 2010 and March 2015. FNS provided Petitioner with clues, called “Fraud-prone Profiles,” that

could indicate that a household had used the EBT card to obtain cash or other ineligible items, instead of food. These clues included:

- Repeated transactions that occur too rapidly after the prior transaction to be a legitimate food purchase. This is even more likely to reflect EBT trafficking at stores not equipped with high-speed optical scanners at checkout, such as Santa Claus Mini Mart.
- Excessively large transactions based on the size and nature of the store's operation.
- Repeated transactions using the same EBT card during the course of a given day. This includes a series of two or more consecutive transactions, or a number of transactions spread out over the entire day.
- Consecutive transactions ending in the same cents value, either zero cents or some other cents value in blocks or three or more consecutive transaction. The probability of transactions ending in zero cents or any other cents value increases exponentially, with the odds of two consecutive transactions at 1 in 100; three consecutive transactions 1 to 10,000; four consecutive transactions 1 in 1,000,000, and so on.
- Zeroing out a client's Food Stamp account, with complete or near complete depletion of the balance of an account in one transaction or a series of transactions rapidly repeated.
- Transactions after a store's regularly posted hours.
- Repeated requests for replacement cards indicate a client selling their cards for cash.
- Odd cents transactions followed by large withdrawals, which indicate a client checking their Food Stamp account balance followed by a large depletion.

These fraud-prone patterns can be found by reviewing DFCS' records of Food Stamp benefits that are issued to the household and accessed through a computer program called "SUCCESS;" the EBT transactions shown for both the household and Santa Claus Mini Mart maintained on DFCS' vendor's database, which is known as "EPIC;" and the vendor's EXCEL spread sheet records. (Testimony of Agent Holnes; Santa Claus Binder, Exhibits 7, 11, 12).

7. Dana Manders, the Section Manager for the Benefit Integrity and Recovery Unit of OIG, testified that she instructed her investigators to only look at EBT transactions (or, in certain cases, a series of transactions) of greater than \$150.00 in supposed food purchases as potential fraud. Ms. Manders stated that she did not rely solely on the FNS investigation in determining what types of fraud should be flagged for investigation, but rather used data regarding the store and its clients, her training and experience in conducting and overseeing EBT fraud investigations, and the size and type of store operated by Santa Claus Mini Mart. (Testimony of OIG Manager Manders).

(b) Investigation of Respondent's EBT Transactions

8. Respondent applied for Food Stamps as the head of a household consisting of four persons, and during the period Petitioner investigated her for possible EBT trafficking the household was composed of six persons. She was approved for Food Stamps, and DFCS issued an EBT card for her to access her benefits. The EBT card issuer provided Respondent with a brochure informing her that she could not use the card to purchase ineligible food items, or exchange her benefits for cash. (Testimony of Agent Holnes Evidence Packet for Respondent Sheena Simmons, Exhibit 5).

9. Agent Holnes reviewed the EPIC records from the DFCS vendor and found eleven transactions that met the fraud-prone patterns and minimum transaction threshold of \$150.00:

- March 8, 2011, 1:39.49 p.m.- Transaction of \$101.49.
- March 8, 2011, 1:42.04 p.m.- Transaction of \$19.82. This transaction occurred less than three minutes after the first transaction of the day by Respondent at Santa Claus Mini Mart. Considered together, these transactions fit the ‘rapid and repeated’ fraud-prone pattern. Although less than the \$150.00 minimum, Petitioner considers these transactions as evidence of EBT trafficking.
- April 6, 2011- Transaction of \$224.81. This met the fraud-prone patterns as it was too large for the available inventory of eligible food items in stock at the store.
- May 9, 2011- Transaction of \$225.46. Ibid.
- June 8, 2011, 1:08.01 p.m. – Transaction of \$180.81 Ibid.
- June 9, 2011, 4:32.13 p.m.- Transaction of \$201.02. Ibid. ¹
- September 9, 2011- one transaction for \$240.36. Id.
- October 6, 2011- one transaction for \$226.43. Id.
- November 13, 2011- one transaction for \$248.59. Id.
- January 14, 2012- one transaction for \$226.53. Id.
- October 17, 2013- one transaction for \$176.28. Id.

The total value of the Food Stamp benefits transacted by Respondent at Santa Claus Mini Mart that Petitioner determined was proof of EBT trafficking was rounded to \$2,071.00. ² Petitioner asserted that this was the first intentional program violation committed by Respondent, and that she should be disqualified from participation in the Food Stamp Program for twelve months. (Testimony of Agent Holnes; Evidence Packet for Respondent Sheena Simmons; Exhibits 1, 2, 4, 5).

10. Respondent testified that she shopped at Santa Claus Mini Mart because it was convenient, but she lived at least 7 miles from the store at all times relevant to Petitioner’s investigation and passed several stores along the way that accepted Food Stamps. Respondent stated that she did not have a vehicle at the time, and had to catch a ride with someone so she could shop for groceries. Despite her lack of reliable transportation, Respondent testified that she made several very large purchases at Santa Claus Mini Mart, and admitted that she often spent a large percentage of her monthly Food Stamp allotment at that store. Respondent testified that the photographs taken by the FNS investigator in June 2014 do not show shelving and coolers that were present in the store in 2011 to 2013. (Testimony of Respondent).

IV. Conclusions of Law

Based upon the foregoing findings of fact, the undersigned Administrative Law Judge concludes as a matter of law:

¹ The “Transaction Detailed Report” admitted into evidence as Petitioner Exhibit 2 is very difficult to read. This transaction may have occurred on June 8. If so, then the transaction meets an additional fraud-prone pattern, as it indicates two large transactions were made at the same store on the same day, which depleted a significant portion of Respondent’s benefits for the entire month.


² The amount of each transaction shown in Petitioner Exhibit 2 is hard to read. It is possible that one or more of the transactions listed in this Decision are incorrect. The ALJ notes, however, that the total amount of the overissuance claim alleged by Petitioner is within a few cents of the figures contained in this Decision, and therefore is not of concern.

1. Federal law governing the Food Stamp Program is found in the Food Stamp Act, 7 U.S. Code § 2011 et seq; and the Food Stamp Program Regulations, 7 CFR § 271 et seq. The Georgia Department of Human Services has issued unpublished guidelines for the daily governance of the state program in its Economic Support Services Manual (ESSM), Volume III. The ESSM is available to the public online at <http://odis.dhs.ga.gov/Main/Default.aspx>.
2. An “Intentional Program Violation” or “IPV” occurs when a person intentionally commits any act or acts that constitute a violation of the Food Stamp Act, Federal regulations, or the Georgia rules and guidelines, for the purpose of using, presenting, transferring acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR § 273.16(c)(2). See also ESSM, Volume III, Section 3315, p. 3315-1. In Georgia administrative proceedings, the person alleged to have committed IPV is called “Respondent.” In most cases, the Respondent is also the head of their Food Stamp household, but this is not always so.
3. A person who is found to have committed an Intentional Program Violation shall be disqualified from participating in the Food Stamp Program for 12 months for a first violation, 24 months for a second violation, and permanently for a third violation. 7 U.S. Code § 2015(b)(1).
4. Petitioner bears the burden of proof regarding any alleged Intentional Program Violation committed by a member of a Georgia Food Stamp household. OSAH Rule 7(1). The burden of proof in an Intentional Program Violation case is by “clear and convincing evidence.” CFR § 273.16(e)(4),(6). This standard is much higher than the usual “preponderance of the evidence” standard used in non-IPV Food Stamp hearings, and which is the common standard of proof in civil cases. Clear and convincing has been found to mean “highly probable” evidence. U.S. v. Owens, 854 F. 2d. 432, 436 n.8 (11th Cir. 1988).
5. Food Stamp “Trafficking” is defined as the buying or selling of Food Stamps “for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone....” 7 CFR § 271.2. “Eligible Food” is defined as “any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption....” 7 CFR § 271.2.
6. The ALJ observed Respondent during the hearing, and had ample opportunity to assess the veracity of her story as well as her overall credibility. The ALJ is particularly concerned that Respondent claims she made many large alleged food purchases when she did not have reliable transportation, and that she passed a number of stores that accept Food Stamps in order to travel to Santa Claus Mini Mart. The ALJ recognizes that Petitioner did not produce the FNS employee who initially investigated the store’s operations for potential EBT trafficking, and no OIG employee actually visited the store while the alleged trafficking occurred. Despite these evidentiary limitations in Petitioner’s case, the lack of believability of Respondent’s story persuades the ALJ that she actually exchanged her benefits for cash or some other ineligible items. Therefore, the ALJ concludes that Respondent must be disqualified from the Food Stamp Program as she: (1) intended to traffic her Food Stamp benefits; and (2) in fact trafficked her benefits. See 7 C.F.R. Part 273.16(e)(4), (6).

V. Decision

IT IS HEREBY ORDERED THAT Petitioner's decision to administratively disqualify Respondent from Food Stamp Program participation for a period of twelve months for the first IPV, and to collect an overissuance of benefits of \$2,071.00 from the household, is **AFFIRMED**.

SO ORDERED this 4 day of April 2018.


M. PATRICK WOODARD JR.
Administrative Law Judge

