

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



DHS, OFFICE OF INSPECTOR GENERAL,  
Petitioner,

v.

[REDACTED],  
Respondent.

Docket No.: [REDACTED]  
[REDACTED]-OSAH-OIG-EBTFSF-33-Woodard

Agency Reference No.: [REDACTED]

CORRECTED FINAL DECISION

I. Introduction

This case concerns Petitioner's action to administratively disqualify Respondent from participation in the Supplemental Nutritional Assistance Program ("SNAP"), commonly called 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 case was heard by the undersigned Administrative Law Judge ("ALJ") at the Office of State Administrative Hearings, Atlanta. Petitioner was represented by Laurie Brown, Attorney at Law, Decatur, appearing as a Special Assistant Attorney General. Charlene Benn, Special Agent with the Office of Inspector General (hereafter "Agent Benn") testified on Petitioner's behalf. Respondent was represented by Jennifer Yankulova, Attorney at Law, Atlanta Legal Aid Society.

For the reasons stated herein, Petitioner's decision to administratively disqualify Respondent from Food Stamp Program participation and to assess and collect a claim for overissuance of benefits is **AFFIRMED**, but the original decision is **CORRECTED** to show that the claim amount is \$1277.18.

II. Findings of Fact

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

(a) Summary of Dan's Mobile a/k/a The Tissue Man 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 ("Petitioner" 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 Agent Benn).

3. Hitesh Harji, a/k/a "Johnny", a/k/a "Tissue Man," concocted a novel scheme to defraud the Federal government of millions of dollars in Food Stamp benefits. Harji and his unknown conspirators obtained at least 35 point-of-sale ("POS") terminals that they used to transact benefits from the EBT cards issued to approved Food Stamp households. With only one or two exceptions, the POS terminals were not kept in a fixed location such as a grocery store or supermarket. Instead, the POS terminals were kept in a van or other motor vehicles and driven to various locations in the Metro Atlanta area. Harji and his cohorts would drum up business by advertising the name and contact number for "Tissue Man" on a van or other vehicle; by passing out fliers with his contact information; and by word-of-mouth referrals from previous customers who exchanged their Food Stamps for cash. The driver of the vehicle would make contact with a person in possession of an EBT card and use the card to make a transaction that appeared in the computer records as a purchase of eligible food items. In fact, the driver had no eligible food items for sale. (Likewise, there is no evidence that the one or two POS machines in a fixed location were used to purchase eligible food items). The driver would give the person presenting the EBT card cash in exchange for their Food Stamp benefits. The average exchange rate was usually 50-60% to the holder of the EBT card, and 40-50% to Harji and/or his cohorts. (Testimony of Agent Benn; Trial Notebook Exhibits 1-5, 11).

4. FNS has access to the computer database showing all EBT transactions for each POS terminal. Over time, FNS noticed a very high number of EBT transactions and total dollar amounts on the POS terminals owned and operated by Harji and his cohorts. FNS initiated an investigation, and sent Salina Walker, Special Agent with the U.S.D.A. Office of Inspector General, to conduct a covert operation regarding Harji's business dealings. The results of her investigation are found in a compilation of 11 exhibits contained in what is identified herein as the "Trial Notebook." This notebook was tendered into evidence in each case involving Dan's Mobile. (Trial Notebook Exhibits 1-11; testimony of Agent Benn).

5. The exhibits in the Trial Notebook show that Agent Walker met with Harji on at least six occasions, and surreptitious pictures were taken of Harji during each meeting. During their first meeting on January 31, 2017, Walker transacted her FNS-issued EBT card for \$199.33 and \$199.62 and received \$200.00 in cash. Walker and an undercover IRS agent met with Harji on April 20, 2017. The IRS agent transacted his card for \$199.31 and received \$100.00 in cash. Walker transacted her EBT card for \$99.99 and received \$50.00 cash. Walker and the IRS agent again met with Harji on May 16, 2017. The IRS agent transacted his EBT card for \$199.98 and received \$100.00 in cash. Although this transaction was conducted outside Simpson Food Mart in Atlanta, no eligible food items were provided to Walker or the IRS agent. Walker, the IRS agent, and a third person identified only as a “Cooperating Human Source (CHS)” met with Harji on June 6, 2017, at the parking lot of a Taco Bell in Atlanta. This meeting was set up in a phone call to a number shown on an advertising flier. Walker transacted her EBT card twice for a total of \$399.82 and Harji gave her \$200.00. The CHS transacted her FNS-issued card for \$197.33 and received \$100.00 from Harji. He then asked the CHS and Walker to refer more people to his operation. (Trial Notebook Exhibit 4(a-d); testimony of Agent Benn).

6. By August 2018, Harji and Walker were in discussions for Walker to purchase her own EBT POS terminal. Walker, CHS, and the IRS agent met Harji at a SunTrust Bank in College Park on August 22, 2018. Harji offered to help Walker enter the fraudulent POS terminal business, and to assist with this purchase he proposed to advance one-half of the purchase price of \$5,000.00. He told CHS that additional terminals might be available for purchase in the future. Harji explained how his operation worked, including his need to keep daily deposits below \$10,000.00 to avoid scrutiny from his bank. He showed Walker the many requests on his phone to exchange Food Stamps for cash. This meeting ended with a soft agreement for the future purchase of one terminal. (Trial Notebook Exhibit 4(e); testimony of Agent Benn).

7. Walker, CHS, and the IRS Agent met with Harji on September 5, 2018. CHS paid Harji \$2,500.00 to purchase a terminal, and Harji stated that the paperwork was already prepared, and the terminal should arrive within three weeks. Harji explained the pluses of having a terminal make deposits directly into a Chase bank account, and that the new terminal would pay for itself in profit by the end of the next month. Harji gave CHS and Walker advice on how to run their business, including using two phones, one for only EBT customers. (Trial Notebook Exhibits 4(a-f), Testimony of Agent Benn).

8. Following the conclusion of FNS’ investigation, Harji was indicted on eight counts of Wire Fraud by the Grand Jury for the U.S. District Court for the Northern District of Georgia, Indictment No.: 1:19-CR-49. He was arrested, and Federal officials seized his phone with its copious load of information about the trafficking operation. Harji entered a guilty plea on June 10, 2021 and was sentenced to ten months incarceration in a Federal prison, three years supervised release, and to pay restitution of \$152,624.58. (Trial Notebook Exhibits 2(a-e); Testimony of Agent Benn).

9. FNS cancelled the 35 EBT POS terminals operated illegally by Harji and his cohorts. On February 1, 2022, FNS requested that Petitioner investigate those households that transacted their EBT cards on any of the 35 terminals. Petitioner’s administrators assigned four agents to conduct these investigations, and instructed the agents to look for all transactions between September 22, 2015, and September 30, 2021, regardless of the dollar amount involved. Petitioner’s rationale for not having a minimum dollar amount per transaction before considering the transaction fraudulent is that Harji did not have an inventory of eligible food items to sell, and therefore all transactions were considered fraudulent. Petitioner’s agents did not conduct a field investigation at any location where Harji operated, as the EBT POS terminals had already been confiscated and the evidence was that no fixed location existed where the transactions occurred, such as a grocery store or convenience store. <sup>1</sup> Each agent reviewed the printout of EBT transactions maintained by Conduit, a third-party vendor under contract with the Georgia Food Stamp Program, and a printout of the EBT card history for each household maintained by EPPIC, another third-party vendor. Individual households were identified through their special EBT card numbers, which matched their Food Stamp case number. (Testimony of Agent Benn).

10. Once a household was identified, the agent sent the household a request for a meeting to discuss the allegations of fraud and provided the household with the amount of Food Stamps it allegedly trafficked with Harji’s operation. Some cases were resolved with an agreement for the household to repay the amount of trafficked benefits, and for the Respondent-Head of Household to be disqualified from the Food Stamp Program for a period of at least 12 months. Some cases were rejected by Petitioner’s agents without a finding of trafficking. For those households who did not sign an agreement or whose charges were not rejected, however, the Petitioner referred that household the Office of State Administrative Hearings for adjudication and prepared an exhibit packet with documentation specific to that household. Based on the Georgia agents’ investigation, it appears that over \$12.4 million dollars was transacted on the 35 confiscated POS terminals. (Testimony of Agent Benn).

### **(b) Investigation of Respondent’s EBT Transactions**

11. Respondent applied for Food Stamps as the head of a household. 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. (Exhibits 2,6 in Respondent Evidence Packet; Testimony of Agent Benn).

---

<sup>1</sup> As stated in Finding of Fact # 3, there were two fixed-location stores where POS terminals were supposedly affiliated, but the evidence in this case does not indicate that the transactions allegedly made by Respondent were conducted at either store. Further, Agent Walker’s narrative shows that even when a transaction was made at a fixed location, no eligible food items were provided in exchange for the Food Stamps taken from an EBT card.

12. Agent Benn reviewed the EPICC records from the DFCS vendor, and found 24 transactions totaling \$1277.18 that she concluded were trafficking in Food Stamps.<sup>2</sup> (Exhibits 3,4 in Respondent Evidence Packet; Testimony of Agent Benn).

### III. Conclusions of Law

1. Federal law requires that “[b]enefits issued to eligible households shall be used by them only to purchase food from retail food stores which have been approved for participation in the supplemental nutrition assistance program at prices prevailing in such stores . . . .” 7 U.S.C. § 2016(b); see also 7 C.F.R. § 274.7(a).

2. An intentional program violation occurs when a food stamp applicant or recipient has “intentionally . . . [c]ommitted 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.” 7 C.F.R. § 273.16(c)(2); see also 7 U.S.C. § 2015(b)(1). (Emphasis added by the Court).

3. Petitioner bears the burden of proof regarding any alleged Intentional Program Violation committed by a member of a Georgia Food Stamp household. Ga. Comp. R. & Regs. 616-1-2-.071(1). The burden of proof 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).

4. The term “trafficking” is defined as “[t]he buying, selling, stealing, or otherwise effecting an exchange of [food stamp] 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 . . . .” 7 C.F.R. § 271.2.

5. At the hearing, Respondent asserted that Exhibits 1,4,5 and 7 in Petitioner’s Trial Notebook do not meet the standard for admissibility under either the business record or public record exceptions to the Hearsay Rule. See O.C.G.A. §§ 24-8-803(6,8) and 24-9-902 and 903. The court admitted these records over Respondent’s objection but acknowledged that had Agent Walker appeared and made herself available for cross examination the records would carry much higher evidentiary weight. Respondent further asserted that the evidence presented by Petitioner is insufficient to meet the “clear and convincing” evidentiary standard necessary for the Court to conclude that Respondent intentionally trafficked her Food Stamp benefits. In support of this assertion, Respondent referred the Court to In re Estate of Burton, 265 Ga. 122 (1995), in which the Georgia Supreme Court addressed the question of whether a man claiming to be the biological son of an intestate decedent could inherit from his estate by producing “clear and convincing evidence that the child is the child of the father and that the father intended for the child to share” in his estate. (citations to quoted caselaw is omitted here). While the justices who joined in Justice Hunstein’s majority opinion and Justice Carley in his concurrence engaged in a discussion of the proper definition of “clear and convincing evidence,” the ruling of the Court appears to hinge on the quality of the evidence that opposed the putative son’s claim of parentage. Several employees of the decedent and a relative testified at the trial court that the decedent never mentioned having a son, or when he on occasion did identify the claimant as his son he later recanted that assertion. In applying the Burton opinion to the present case, the administrative court concludes that the ultimate issue must be the quality of the evidence presented by Petitioner in support of its claim that Respondent intentionally trafficked in Food Stamps.

6. Despite the lower evidentiary weight given Respondent’s evidence, the court concludes Petitioner’s exhibits provided highly probable evidence that the Respondent committed an intentional violation of the laws and rules governing the Food Stamp Program. Under the standard stated in U.S. v Owens, supra, clear and convincing evidence has therefore been produced. More specifically, the Respondent engaged in unlawful trafficking by intentionally using her EBT card to exchange food stamp benefits for cash or consideration other than eligible food on a terminal operated by Harji or his operatives. 7 U.S.C. §§ 2015(b)(1), 2016(b); 7 C.F.R. §§ 271.2, 273.16(c)(2), (e)(6), 274.7(a). As a penalty for this violation, the Respondent must be disqualified from program participation. 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(b)(1). The disqualification period is twelve months for a first violation. Id.

7. While the Respondent is the only household member who is disqualified from program participation, each adult member of the household at the time the trafficking occurred is responsible for making restitution for the value of the trafficked benefits. 7 C.F.R. § 273.18(a)(1)(ii), (4)(i). The value of the trafficked benefits may be collected by any of the methods

---

<sup>2</sup> Agent Benn further stated that 6 transactions ended in “00” amounts, which is another indicator of trafficking. This potential fraud-prone pattern was not mentioned in any of the documents sent to Respondent, however, and the Court does not consider the “00” transactions to be additional evidence that Respondent trafficked her benefits.

listed in 7 C.F.R. § 273.18, including recoupment from the household's ongoing benefits, if any. 7 C.F.R. § 273.16(b)(12); see also O.C.G.A. § 49-4-15(c)(4).

#### IV. Corrected Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that the Respondent is administratively disqualified from Food Stamp Program participation for a period of twelve months.

Additionally, the Petitioner is authorized to establish a claim against the Respondent's household, which is corrected to **\$1,277.18** which is the value of the trafficked benefits, as specified above, and to collect the claim by any allowable method, including recoupment from the household's ongoing benefits, if any.

SO ORDERED, this 27th day of January, 2023



M. Patrick Woodard  
Administrative Law Judge

