

**IN THE SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT
STATE OF GEORGIA**

[REDACTED])	
)	
Petitioner,)	CIVIL ACTION
)	File No. [REDACTED]
v.)	
)	
CANDICE L. BROCE,)	
Commissioner,)	JUDGE SCHWALL
Georgia Department of Human Services,)	
)	
Respondent.)	

FINAL ORDER ON PETITION FOR JUDICIAL REVIEW OF AGENCY'S FINAL DECISION

This case is before the Court on Petitioner [REDACTED]'s ("Petitioner") Petition for Judicial Review ("Petition") of the January 27, 2023 Final Decision of the Administrative Law Judge ("Final Decision") in the matter of DHS, Office of Inspector General v. [REDACTED] [REDACTED] which disqualified Petitioner from participating in the Food Stamp Program for twelve months and ordered her to repay \$1,277.18. After careful review of the record, this Court hereby AFFIRMS the Final Decision on the legal grounds set forth in the Brief of Respondent, Georgia Department of Human Services ("Respondent's Brief"), which are incorporated by reference herein, and for the reasons set forth below.

I. FACTUAL BACKGROUND

The underlying administrative decision came as a result of the Georgia Department of Human Services (DHS) by and through the Office of Inspector General's ("OIG") determination that Petitioner had committed an intentional program violation, as that term is defined in 7 U.S.C. § 2015(b)(1) and 7 C.F.R. § 271.2. On May 19, 2022, DHS issued a letter to Petitioner outlining

a discrepancy in her Supplemental Nutrition Assistance program or Temporary Assistance to Needy Family. The letter requested the Petitioner call a Compliance Investigator II with the Office of Inspector General at a prescheduled time. On June 3, 2022, DHS issued a second letter to Petitioner outlining suspicious transactions on Petitioner's EBT card from October 24, 2016, until August 28, 2017, because \$1,277.18 of the financial transactions were from one or more specific ATM/POS terminal devices associated with DAN'S MOBILE a.k.a. TISSUE MAN. The letter stated that a disqualification hearing would be scheduled. Petitioner's administrative disqualification hearing was held on November 30, 2022, at OSAH.

On January 27, 2023, a Final Decision of the Administrative Law Judge ("ALJ") was filed with OSAH, finding Petitioner disqualified from the Food Stamps program for twelve months and responsible for paying back \$1,988.26 in total to Respondent. On January 27, 2023, a Corrected Final Decision of the ALJ was then filed with OSAH, finding Petitioner disqualified from the Food Stamps program for twelve months and responsible for paying back \$1,277.18 in total to Respondent. Petitioner filed her Petition for Judicial Review in this court on February 28, 2023. Respondent filed its Brief on May 24, 2023, followed by the filing of the Petitioner's Brief on May 31, 2023.

II. LEGAL CONCLUSION

Pursuant to O.C.G.A. § 50-13-19(h), this Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. This Court may affirm the decision of the agency or remand the case for further proceedings. The Court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Judicial review of an administrative decision is confined to the administrative record, and this Court 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 50-13-19(h). Questions of fact are subject to the “any evidence” standard of review, pursuant to which a court must uphold the factual determinations of an agency “if there is any evidence [in the record] to support the findings.” *C&M Enters. of Ga., LLC v. Williams*, 346 Ga. App. 79, 87 (2018) (quoting *Pruitt Corp. v. Ga. Dep’t of Comm. Health*, 284 Ga. 158, 160 (2008)). To sustain the factual findings of the Final Decision, the Court need only determine that evidence in the record exists to support those findings.

A. The Petition for Judicial Review

In her Petition, Petitioner asserts that the ALJ’s decision to disqualify Petitioner from the food stamp program for twelve months and find her liable for the \$1277.18 to Respondent for overpay of SNAP benefits due to an alleged Intentional Program Violation (IPV) of SNAP benefits trafficking under 7 U.S.C. § 2015(b)(1) and 7 C.F.R. § 217.2 should be reversed because the Respondent did not meet its evidentiary standard of clear and convincing evidence.

B. Respondent’s Brief

In the Respondent’s Brief, Respondent asserts that the Respondent did meet the required burden of evidence.

OCGA § 50-13-19(h) provides that a court may reverse or modify the agency's decision only if the "administrative findings, inferences, conclusions, or decisions" violate the constitution or a statute, exceed the agency's statutory authority, are based on unlawful procedure, are affected by other errors of law, are clearly erroneous, or are arbitrary, capricious, or an abuse of discretion. Nix v. Long Mountain Resources, Inc., 422 S.E.2d 195, 262 Ga. 506 (1992).

Under O.C.G.A. § 50-13-19(h)(1), this Court may reverse an agency decision if it is in violation of a constitutional or statutory provision. Walker v. Department of Transportation, 630 S.E.2d 878, 279 Ga. App. 287 (2006). The ALJ's decision provides a Conclusion of the Law that lays out the relevant law explaining why Petitioner's actions rise to the level of disqualification from the SNAP program. (Final Decision).

This Court must affirm the decision below if there is any evidence to support it unless it was affected by error of law. See O.C.G.A. § 50-13-19(h). Furthermore, this Court's review shall be confined to the administrative record. See O.C.G.A. § 50-13-19(g). "The court 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(h). The Superior Court, as an appellate court, may not take additional evidence on issues of fact, except on a showing of procedural irregularities and must remand to the agency if additional findings are required. See Georgia Pub. Serv. Comm'n v. Southern Bell, *supra*, 254 Ga. 244, at 246; Coastal Marshland Protection Comm. v. Center for Sustainable Coast, 286 Ga. App. 518, 520 (2007), aff'd 284 Ga. 736 (2008). The scope of judicial review is limited to those objections which were presented to the agency. See Excelsior Electric Membership Corp. v. Ga. Pub. Serv. Comm'n, 322 Ga. App. 687, 693 (2013).

Petitioner argues that the Final Decision is not supported by the evidence. (Petition for Judicial Review). Petitioner asserted that Exhibits 1, 4, 5, and 7 in the Respondent's Trial

Notebook did not meet the standard for admissibility under either the business record or public record exceptions to the Hearsay Rule during the administrative hearing. (Final Decision; O.C.G.A. §§ 24-8-803, 24-9-902, and 24-9-903). The ALJ admitted the records over Petitioner's objection, but acknowledged the records would have carried a higher evidentiary weight if Agent WALKER had testified during the hearing. (Final Decision).

Petitioner asserted that the allowed exhibits and testimony in the underlying matter does not meet the required four-prong test in the J.A.M. Builder's, Inc. v. Herman, 233 F.3d 1350 (11th Cir. 2000) for reliability and probative force of hearsay evidence. The evidence provided does meet the four-prong test. The out-of-court declarant, Agent WALKER, provided information in her separate investigation involving Mr. HITESH. All evidence was made available per the OSAH rules and procedures before the hearing. Agent WALKER's contact information is in the Trial Notebook, which was provided prior to the hearing. The underlying matter was continued at least once, which gave the Petitioner more time to review all of the proposed exhibits provided prior to the hearing. The information was consistent on its face in that it provides and supports the independent testimony of the OIG Agent BENN. The information has been recognized by courts as inherently reliable because the information was submitted to and provided to the OSAH court as set forth in its own procedures. There are procedures in place that allow this information to be submitted to the parties and the courts.

Petitioner also asserted that the evidence presented by Respondent was insufficient to meet the "clear and convincing" standard of evidence necessary for a finding of intentional trafficking of Food stamps. (Final Decision). Petitioner then cited In re Estate of Burton, 265 Ga. 122 (1995), which discusses the proper definition of "clear and convincing evidence". The ALJ concluded after applying the Burton opinion to the underlying matter, that the ultimate issue

is the quality of the evidence presented by the Respondent in support of its claim that the Petitioner intentionally trafficked in Food Stamps. (Final Decision). The ALJ held that clear and convincing has been found to mean highly probable evidence as ruled in U.S. v. Owens, 854 F. 2d 432, 436 n.8 (11th Cir. 1988). The ALJ held that under this standard the Respondent's exhibits provided highly probable evidence that the Petitioner intentionally engaged in unlawful trafficking in Food Stamps.

The ALJ correctly overruled Petitioner's objection that the Respondent's Exhibits 1, 4, 5, and 7 in the Respondent's Trial Notebook were not admissible under O.C.G.A. §24-8-803(8) as a Public Record. The Public Record exception allows the admissibility of "... public records, reports, statements, or data compilations, in any form, of public offices, setting forth: (A) The activities of the public office..." The Department is clearly a "public office" as defined in O.C.G.A § 24-8-801(e), and its file is a "public record", as defined in O.C.G.A. §24-8-801(g) . See, O.C.G.A. § 50-18-70(b)(2), for the broad definition of a public record in the Open Records Act. The Rules of OSAH provide leeway to the ALJ in terms of evidence that can be considered in its discretion, with the weight to be given to any evidence being determined by the ALJ based upon its reliability and probative value. See, OSAH Rule § 616-1-2-.18(3). The ALJ correctly allowed the Respondent's Exhibits 1, 4, 5, and 7 into evidence.

Additionally, the Residual Hearsay Rule also permitted the introduction into evidence of the Trial Notebook. The Residual Hearsay Rule provides in relevant part that: "A statement not specifically covered by any law but having equivalent circumstantial guarantees of trustworthiness shall not be excluded by the hearsay rule, if the court determines that: (1) The statement is offered as a material fact; (2) The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts;

and (3) The general purposes of the rules of evidence and the interests of justice will best be served by admission of the statement into evidence.” Upon review of the record, the Petitioner was made aware in advance of the hearing that the Department planned to use the Trial Notebook as required.

The evidence presented to the ALJ was sufficient to substantiate the agency’s claim that Petitioner committed an IPV of the SNAP program. Where a person has an item in their control, intent may be established. See Hardin v. State, 277 Ga. 242, 244 (2002). 7 C.F.R. Section 273.16(c)(2) provides the Definition of intentional Program violation. Intentional Program violations shall consist of having intentionally committed 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. Under this definition, the evidence of the agent as well as the Exhibits provided in the OSAH hearing show that the use of the Petitioner’s card at any of the terminals would constitute a violation of SNAP program. The Petitioner cites Motes v. Hall, 251 Ga. 373 (1983). However, the facts in that case involve a state agency’s petition for sterilization, not food stamp benefits. Food stamps are basically cash for food and to lose food stamp benefits would be a loss of money, not a loss of the right of procreation which is held as a fundamental right.

O.C.G.A. § 50-13-19(h)(5) provides that the appropriate standard of review of a superior court reviewing the final decision of an agency is whether the agency’s decision was “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” This “clearly erroneous” standard has been held to be the same as the “any evidence rule” which leaves “only a determination of whether the facts found by the agency are supported by ‘any evidence.’” Coastal Marshland Protection Comm. v. Center for Sustainable Coast, 286 Ga. App.

518, 521 (2007). Under the “any evidence rule,” the judiciary will accept the agency’s findings of fact if there is any evidence to support the findings. Pruitt Corp. v. Ga. Dep’t of Comm. Health, 284 Ga. 158, 160 (2008).

In its Final Decision, the ALJ addressed the clear and convincing standard of review for the alleged violations. (Final Decision.). The ALJ acknowledged that this standard has been found to mean “highly probable” evidence. (Final Decision.). The ALJ examined all evidence submitted in the case, including testimony from OIG Agent BENN, and the investigation documents from Agent WALKER. (Final Decision.). The ALJ weighed all together to determine that it was “highly probable” that Petitioner engaged in food stamp trafficking and that she had the requisite intent.

III. CONCLUSION

After reviewing the entire record, the Court finds and concludes that the Final Decision is supported by the administrative record. Respondent met its burden of proof by clear and convincing evidence. The testimony and evidence provided support the ALJ’s ruling. Accordingly, IT IS HEREBY ORDERED AND ADJUDGED that the Petition is DENIED and the Final Decision is AFFIRMED. The Clerk of Court shall mark this matter as CLOSED.

SO ORDERED this 14th day of JULY, 2023.

/S/ CRAIG L. SCHWALL, SR.
JUDGE CRAIG L. SCHWALL, Sr.
Fulton County Superior Court

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