



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Jeffrey H. Coben, M.D.
Interim Cabinet Secretary

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Sheila Lee
Interim Inspector General

January 31, 2023

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-2504

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Christina Saunders, IFM, [REDACTED] DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

████████████████████,

Defendant,

v.

Action No: 22-BOR-2504

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Movant.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from an Administrative Disqualification Hearing for ██████████ requested by the Movant on November 17, 2022. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual and Federal Regulations at 7 CFR §273.16. The hearing was convened on January 18, 2023.

The matter before the Hearing Officer arises from a request by the Movant for a determination as to whether the Defendant has committed an Intentional Program Violation and therefore should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Movant appeared by Christina Saunders with Investigations and Fraud Management. The Defendant failed to appear. Ms. Saunders was placed under oath, and the following documents were admitted into evidence:

Movant's Exhibits:

- M-1 Electronic Code of Federal Regulations, §273.16
- M-2 Magistrate Court of ██████ County, WV, Order of Restitution, August 4, 2022; Magistrate Court of ██████ County, WV, Guilty or No Contest Plea, August 4, 2022; Magistrate Court of ██████ County, WV, Plea Agreement, August 4, 2022; Magistrate Court of ██████ County, WV, Criminal Judgment Order, August 4, 2022; Magistrate Court of ██████ County, WV Motion, August 4, 2022
- M-3 Magistrate Court of ██████ County, WV Criminal Complaint
- M-4 West Virginia Code §61-3C-13
- M-5 West Virginia State Police Report of Criminal Investigation; Court Disposition Reporting; Original Narrative; West Virginia State Police Livescan Transaction Report; Magistrate Court of ██████ County, WV, Warrant for Arrest; Digital Video Snapshot;

- ██████████ Driver's License; ██████████ Driver's License; Transaction Detail
- M-6 West Virginia Department of Health and Human Resources Claims Payment Tracking Form, December 2022
- M-7 Waiver of Administrative Disqualification Hearing (ig-ifm-Waiver); Advance Notice of Administrative Disqualification Hearing Waiver (ig-ifm-ADH-Ltr), dated October 12, 2022
- M-8 Electronic Disqualified Recipient System (EDRS) screen print
- M-9 West Virginia Income Maintenance Manual, Chapter, §11.2
- M-10 West Virginia Income Maintenance Manual, Chapter, §11.2.3.B
- M-11 West Virginia Department of Health and Human Resources Application for Benefits, signed and dated May 13, 2019; Rights and Responsibilities signed and dated May 13, 2019; Supplemental Nutritional Assistance Program (SNAP) and Medicaid/WVCHIP (CSLR) form signed and dated March 25, 2022

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Movant alleged that the Defendant committed an Intentional Program Violation (IPV) by the unauthorized use of another individual's EBT card on March 4 and April 14, 2022 to purchase items.
- 2) The Movant requested that an IPV penalty of 12 months be imposed against the Defendant.
- 3) The Defendant was notified of the hearing by scheduling order mailed on November 23, 2022. On December 28, 2022, the Defendant requested a continuance in the matter, which was granted. A Continuance Order was issued on December 29, 2022, continuing the hearing to January 18, 2023.
- 4) The Defendant failed to appear for the hearing or provide good cause for her failure to do so. In accordance with 7 CFR §273.16(e)(4) and West Virginia Department of Health and Human Resources' Common Chapters Manual, §740.20, the hearing was held without the Defendant in attendance.
- 5) The Defendant was a SNAP recipient in an assistance group with her husband, ██████████. (Exhibit M-11)
- 6) The Defendant has been a recipient of SNAP benefits for several years who has signed acknowledgement of the Rights and Responsibilities on applications and renewals, most recently on March 25, 2022. (Exhibit M-11)

- 7) [REDACTED] who was incarcerated provided the Defendant with her EBT card and pin number. (Exhibit M-3)
- 8) The Defendant was not an authorized EBT user for [REDACTED] EBT account. (Exhibit M-3)
- 9) The Defendant accessed [REDACTED] EBT account to make purchases at a Walmart store on two separate occasions – March 4 and April 14, 2022. (Exhibits M-3 and M-5)
- 10) The West Virginia State Police arrested and charged the Defendant with two counts of fraudulent use of an access device (EBT card) and one count of felony conspiracy. (Exhibit M-5)
- 11) On August 4, 2022, as part of a plea agreement, the Defendant plead guilty to two counts of petit larceny and one count of misdemeanor conspiracy and agreed to pay restitution to the Movant. (Exhibit M-2)
- 12) On December 1, 2022, the Defendant made a restitution payment to the DHHR. (Exhibit M-6)

APPLICABLE POLICY

Code of Federal Regulations, 7 CFR §273.16(b), Disqualification penalties:

(1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first intentional Program violation, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section;

(ii) For a period of twenty-four months upon the second occasion of any intentional Program violation, except as provided in paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section; and

(iii) Permanently for the third occasion of any intentional Program violation.

...

(7) If a court fails to impose a disqualification or a disqualification period for any intentional Program violation, the State agency shall impose the appropriate disqualification penalty specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section unless it is contrary to the court order.

...

(13) The individual must be notified in writing once it is determined that he/she is to be disqualified. The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification. The disqualification period must continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household.

Code of Federal Regulations, 7 CFR §273.16(c), Definition of intentional Program violation: Intentional Program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) 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.

DISCUSSION

The Movant alleges that the Defendant committed an Intentional Program Violation (IPV) by the unauthorized use of another individual's EBT card on March 4 and April 14, 2022 to purchase items at Walmart. The Movant seeks the imposition of a twelve-month disqualification of the Defendant from SNAP benefits.

The Movant presented the Criminal Complaint and Report of Criminal Investigation signed and attested to by the investigating West Virginia State Police Officer, [REDACTED], upon which the Defendant was arrested and charged with the two counts of fraudulent use of an access device and one count of felony conspiracy. The investigating officer attested to having listened to an audiotape recording between the Defendant and [REDACTED] jail cell conversations and video footage of the Defendant purchasing items with [REDACTED] EBT along with the receipts for those purchases on March 4 and April 14, 2022. The Defendant was not an authorized user of [REDACTED] EBT card.

After investigation by [REDACTED], the Defendant was arrested and charged with two counts of fraudulent use of an access device (EBT card) and one count of felony conspiracy. On August 4, 2022, as part of a plea agreement, the Defendant pled guilty to two counts of petit larceny and one count of misdemeanor conspiracy and agreed to pay restitution to the Movant. The Defendant made a payment on December 1, 2022 of \$92 towards the agreed upon restitution amount.

Federal regulations define an IPV as committing 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. The evidence presented showed by clear and convincing evidence that the Defendant, who was not an authorized user of [REDACTED] EBT card, accessed [REDACTED] EBT to purchase items at Walmart on March 4 and April 14, 2022. The Defendant has been a recipient of SNAP benefits and has signed the Rights and Responsibilities form on several occasions acknowledging the penalties for committing an IPV.

The Defendant did not appear for the hearing, and as such could not dispute facts presented by the Movant.

CONCLUSIONS OF LAW

- 1) The Defendant intentionally used another individual's EBT card for which she was not an authorized user to purchase items on March 4 and April 14, 2022 which meets the definition of an Intentional Program Violation.
- 2) As this is the Defendant's first IPV offense, she is subject to a twelve month disqualification from participation in SNAP.

DECISION

It is the ruling of the State Hearing Officer that the Defendant committed an Intentional Program Violation. The Defendant will be disqualified from participation in SNAP for a period of one year to begin effective March 1, 2023.

ENTERED this 31st day of January 2023.

Lori Woodward, Certified State Hearing Officer