



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 E. Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

August 9, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing held on July 13, 2012, for the purpose of determining whether an Intentional Program Violation (IPV) was committed by you.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and 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.

An Intentional Program Violation consists of intentionally having made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of the Food Stamp Act, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. [WV Income Maintenance Manual Section 20.2.C.2 and 7 CFR Section 273.16 (c)]

Information submitted at the hearing reveals that you intentionally sold your SNAP Electronic Benefits Transfer (EBT) cards and passwords in order to derive financial gain from your SNAP benefits.

It is the decision of the State Hearing Officer that an IPV was committed by you and a disqualification penalty of one (1) year will be applied. Your disqualification from SNAP will begin effective September 1, 2012.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 12-BOR-1352

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

Movant.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing for ----- . 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. The hearing was convened on July 13, 2012, at the ----- County office of the WV Department of Health and Human Resources (DHHR) in -----, WV.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (SNAP) is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Brian Shreve, Repayment Investigator, Department's Representative.

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed participant under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in SNAP.

V. APPLICABLE POLICY:

7 CFR §273.16 Code of Federal Regulations
Common Chapters Manual, Chapter 700
West Virginia Income Maintenance Manual, Chapter 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- M-1 Copy of the Code of Federal Regulations (7 CFR §273.16) showing disqualifications for Intentional Program Violations
- M-2 Transaction history from Defendant's Electronic Benefits Transfer (EBT) account from January 21, 2011, to May 29, 2012
- M-3 Series of photographs from the security camera of ----- [REDACTED] of -----, WV, with time signatures of 2:38 to 2:39 PM on March 17, 2012
- M-4 Transaction detail from Defendant's EBT account showing a purchase made at ----- Foodland on March 17, 2012, at 2:39 PM
- M-5 Copy of Rights and Responsibilities form dated and signed by Defendant on February 9, 2012
- M-6 Copy of Income Maintenance Manual, Chapter 20.2, showing SNAP benefit claims and repayment procedures
- M-7 Copy of IFM-1-7a, Investigation Interview Appointment form, and IFM-BR-44b, Waiver of Administrative Disqualification Hearing form, sent to Defendant on December 8, 2011, and April 5, 2012
- M-8 Copy of ES-FS-5, Food Stamp [SNAP] Claim Determination form

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of IPV in the Defendant's SNAP case because he allegedly engaged in trafficking his SNAP benefits by selling his Electronic Benefits Transfer (EBT) card and password.
- 2) Defendant was mailed notice of the Administrative Disqualification Hearing (ADH) on June 13, 2012, by first class mail. The notice was sent to -----, ----- . This is identified by Department's Representative as being Defendant's mailing address for all previous WV DHHR correspondence.
- 3) The hearing was scheduled to begin at 10:00 AM on July 13, 2012, and as of 10:15 AM, the Defendant failed to appear. As set forth in regulations (7 CFR §273.16(e) (4)), and

State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, 740.20), the hearing convened at 10:15 AM, and was conducted without the Defendant in attendance.

- 4) Department's Representative, a Repayment Investigator for the Investigations and Fraud Management (IFM) unit of the WV DHHR, stated that the US Department of Agriculture (USDA), the federal agency which funds state SNAP programs, alerted him and other investigators to SNAP recipients in West Virginia who had requested an inordinate number of EBT replacement cards. He stated that the Defendant was a SNAP recipient identified by the USDA as one of these individuals. He submitted into evidence a print-out of Defendant's transaction history from his EBT account (Exhibit M-2) indicating that he had requested EBT card replacements fifteen (15) times from January 21, 2011, to May 29, 2012.
- 5) Department's Representative pointed out from the EBT transaction history (Exhibit M-2) that in March 2012, Defendant reported his EBT card numbered ----- had been lost and he requested a replacement. The transaction history indicates this card was replaced by another card, numbered ----- . The new card was activated on March 4, 2012.
- 6) Department's Representative stated he noted in Defendant's transaction history that his EBT card ending in the sequence "-----" was used in a point of sale purchase at a particular register at the ----- [REDACTED] in -----, WV. He stated that he spoke to a manager there and learned that the ----- Foodland has a security system which videotapes customer transactions and sales counter activity, and affixes an accurate date and time stamp to each frame of video. He submitted as evidence an EBT account transaction detail (Exhibit M-4) from Defendant's EBT account indicating that on March 17, 2012, at 2:39 PM, the Defendant's EBT card which ends in sequence "-----" was used at that location. He also submitted into evidence still photographs printed from ----- [REDACTED] security system videotapes recorded from 2:38 PM to 2:39 PM on that date at that register. (Exhibit M-3.) The photographs show a woman making the purchase alone. Department's Representative stated that he checked Defendant's SNAP case record and determined Defendant received SNAP benefits for himself only, and no other individuals are listed in his SNAP assistance group or his household.
- 7) Department's Representative stated that Defendant was aware of the penalties for fraudulently selling his SNAP benefits. He submitted into evidence a Rights and Responsibilities form (Exhibit M-5) Defendant had signed on February 9, 2012, as part of a SNAP benefit review/redetermination. The Rights and Responsibilities form, DFA-RR-1, is a list of applicants' rights and responsibilities for each program for which he or she applies. The applicant signifies that he or she is aware of each right or responsibility by checking "Yes" or "No" at each item. Under the SNAP Program section of the form, item #1 states:

I understand that SNAP benefits are to be used by my family and me to purchase food or seeds. I cannot sell my SNAP benefits or use someone

else's benefits for myself. The SNAP benefits will not be used for any other purpose.

Also on the same document, item #4 states:

I understand if I am found (by court action or administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive SNAP benefits as follows: First Offense – one year; Second Offense – two years; Third Offense – permanently. In addition, I will have to repay any benefits received for which I was not eligible.

Defendant marked “Yes” at both of these items.

- 8) The Code of Federal Regulations, 7 CFR §273.16(c) (Exhibit M-1), defines an Intentional Program Violation (IPV) as follows:

(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 the Food Stamp Act, the Food Stamp Program [SNAP] Regulations, or any State statute 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 (access device).

- 9) The West Virginia Income Maintenance Manual, Chapter 20.2.C.2 (Exhibit M-6), states:

IPVs include making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food Stamp [SNAP] regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits.

VIII. CONCLUSIONS OF LAW:

The Department has provided evidence that the Defendant intentionally sold the EBT card and password access to his SNAP benefits in March 2012. After reviewing the details of the EBT transaction of March 17, 2012, I find the evidence to be clear and convincing that Defendant committed an Intentional Program Violation by doing this.

IX. DECISION:

Selling one's SNAP benefits by selling the EBT card and password is a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Agency's proposal to apply a SNAP disqualification is **upheld**. The Defendant will be disqualified from participation in SNAP for a period of twelve (12) months effective September 1, 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of August, 2012.

**Stephen M. Baisden
State Hearing Officer**