



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

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

May 14, 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 March 20, 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 does not provide clear and convincing evidence that you engaged in SNAP benefit trafficking by attempting to sell your SNAP benefits to another individual.

It is the decision of the State Hearing Officer that no Intentional Program Violation was committed by you. A disqualification penalty will not be applied to your SNAP benefits.

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 & HUMAN RESOURCES
BOARD OF REVIEW**

IN RE: -----,

Defendant,

v.

ACTION NO.: 11-BOR-2619

**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 concluded on May 14, 2012 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 March 20, 2012, at the [REDACTED] County office of the WV DHHR in [REDACTED] 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:

-----, Defendant

-----, Defendant's Witness

Brian Shreve, Repayment Investigator, Department's representative.

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a 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 and 20.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- M-1 Copy of the Code of Federal Regulations (CFR) §273.16 showing disqualifications for Intentional Program Violations.
- M-2 Written statement from ----- of [REDACTED] WV, dated October 11, 2011.
- M-3 Transaction history from Defendant's Electronic Benefits Transfer (EBT) account from May 5, 2011 to October 19, 2011.
- M-4 Copy of Rights and Responsibilities Form dated and signed by Defendant on May 5, 2011.
- M-5 Copy of IFM-BR-44a, Notice of Intent to Disqualify form, and IFM-BR-44b, Waiver of Administrative Disqualification Hearing form, sent to Defendant on October 13, 2011.
- M-6 IFM-BR-44b, Waiver of Administrative Disqualification Hearing form, returned by Defendant on October 21, 2011, indicating she chose her right to have an administrative hearing.

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of Intentional Program Violation, or IPV, in the Defendant's SNAP case because she allegedly sold her SNAP benefits to another individual.
- 2) Department's Representative, a Repayment Investigator for the WV DHHR, stated that on October 11, 2011, ----- of [REDACTED] WV, came to the [REDACTED] County office of the WV DHHR, met with him, and wrote a statement to the Investigator. (Exhibit M-2.) The statement reads as follows:

[Defendant] approached me about buying some food stamps from her. She said she had a doctor's appointment and needed gas money. She

took me to the store and brought [*sic*] some food with the card to show me it worked. I gave her \$80, in return I was to spend \$80 to \$100 in food stamps. I called the next day and the card had been cancelled.

Department's Representative stated that he reviewed the statement with -----, and each initialed it.

- 3) Department's Representative submitted as evidence a print-out from Defendant's Electronic Benefits Transfer (EBT) account, which records the history of each EBT card's activation, lost card report, and benefit transfer. (Exhibit M-3.) He pointed out that the Defendant's EBT card was reported lost on October 10, 2011, and a new card was issued on October 11, 2011.
- 4) Department's Representative argued that Defendant was aware of the penalties for trafficking SNAP benefits. He submitted as evidence a DFA-RR-1, a Rights and Responsibilities form signed by the Defendant on May 5, 2011. (Exhibit M-4.) The DFA-RR-1 is a list of applicants' rights and responsibilities for each program for which an applicant 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 the Food Stamp benefits are to be used by my family and me to purchase food or seeds. I cannot sell my Food Stamp benefits or use someone else's benefits for myself.

Also under the "SNAP Program" section of the form, 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 Food Stamp 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 has marked "Yes" to each of these items.

- 5) Defendant testified that she had a relationship with ----- stepson, and for a time she lived in his home with -----, his wife and the stepson. She testified that in October 2011, she had a serious argument with the stepson and ----- . At that time, she moved out of the home and ended the relationship. She stated that she subsequently determined that her EBT card was not among her possessions that she had moved out of the home at the time of the disagreement. She stated that she called the stepson to request that the card be returned to her, but her request was refused. She stated that she reported the card as lost on October 10, 2011.

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

(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).

7) The West Virginia Income Maintenance Manual, Chapter 20.2.C.2 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 alleges that Defendant attempted to sell her SNAP benefits to another individual in October 2011. However, the only evidence presented to indicate that the Defendant had attempted to sell her SNAP benefits was a statement from the person who allegedly purchased her EBT card. There was no corroborative evidence to suggest that the Defendant and the person who made the statement exchanged money for an EBT card. Also, the Defendant offered testimony to the effect that some personal disagreement had transpired between herself and the family of the person who made the statement, which casts doubt on its veracity. Therefore, the Department has not established clear and convincing evidence that Defendant willfully and intentionally sold her SNAP benefits to another individual.

IX. DECISION:

The Department has not provided clear and convincing evidence that Defendant sold her SNAP benefits to another person.

The Agency's proposal to apply a SNAP disqualification is **reversed**. The Defendant will not be disqualified from participation in SNAP.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of May, 2012.

**Stephen M. Baisden
State Hearing Officer**