



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

June 29, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1819

Dear Ms. [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,

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

Encl: Defendant's Recourse to Hearing Decision
Form IG-BR-29

cc: Brian Shreve, Repayment Investigator

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

██████████,

Defendant,

v.

Action Number: 15-BOR-1819

**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 April 16, 2015. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WV DHHR) Common Chapters Manual and Federal Regulations at 7 CFR Section 273.16. The hearing was convened on May 27, 2015.

The matter before the Hearing Officer arises from a request by the Department for a determination as to whether the Defendant has committed an intentional program violation and thus should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Department appeared by Brian Shreve, Repayment Investigator. The Defendant did not appear. The participant was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations, 7 CFR §273.16
- M-2 Benefit Recovery Referral to Repayment Investigator
- M-3 Form ES-FS-5, Food Stamp (SNAP) Claim Determination
- M-4 West Virginia Regional Jail Authority (WVRJA) Offender Detail, downloaded from the WVRJA Internet site on January 12, 2015
- M-5 Transaction History from the Electronic Benefits Transfer (EBT) account of the Defendant, listing purchases dated December 9, 2014, to January 3, 2015, and detailing one purchase, dated December 24, 2014 at 5:04 PM
- M-6 Transaction History from the Electronic Benefits Transfer (EBT) account of ██████████, detailing one purchase, dated December 24, 2014 at 5:04 PM

- M-7 Rights and Responsibilities form, signed and dated by Defendant on June 2, 2014
- M-8 West Virginia Income Maintenance Manual Chapter 20, §20.2
- M-9 Copy of IG-ADH-WAIVER, Waiver of Administrative Disqualification Hearing form, and IG-IFM-ADH, Notice of Intent to Disqualify form, sent to Defendant on March 25, 2014

Defendant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 Department's representative contends the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because she used the EBT card of her incarcerated brother in order to access and use his SNAP benefits.
- 2) The Department's representative investigated the Defendant's EBT use after receiving a referral from an eligibility worker at the WV DHHR (Exhibit M-2) indicating the Defendant had been using her jailed brother's EBT card.
- 3) The Defendant's brother, [REDACTED], was sentenced to the WV Department of Corrections, [REDACTED], beginning on October 21, 2014 (Exhibit M-4).
- 4) Mr. [REDACTED] EBT card was used in November and December 2014, and in January 2015.
- 5) On December 24, 2014, Mr. [REDACTED] EBT card was used at 5:04 PM at the [REDACTED] [REDACTED] in [REDACTED] (Exhibit M-6). On December 24, 2014, the Defendant's EBT card was used at 5:04 PM at the same location (Exhibit M-5).

APPLICABLE POLICY

WV IMM Chapter 20.2.C.2 provides that once an IPV (Intentional Program Violation) is established, a disqualification penalty is imposed on the Assistance Group members who committed the IPV. The penalties are as follows: 1st Offense – 1 year disqualification; 2nd Offense – 2 years disqualification; 3rd Offense – permanent disqualification.

Pursuant to the Code of Federal Regulations 7 CFR §273.16, an Intentional Program Violation 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 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.

DISCUSSION

The Department's representative argued that someone improperly accessed the EBT account of an incarcerated individual, and the Defendant made this transaction. The EBT Transaction History of Mr. [REDACTED] (Exhibit M-6) reports a purchase at a store in [REDACTED] on December 24, 2014, at 5:04 PM, when he was incarcerated. The EBT Transaction History of the Defendant (Exhibit M-4) reports a purchase on December 24, 2014, at 5:04 PM at the same business.

The Department's evidence against the Defendant is somewhat circumstantial. However, in the absence of testimony from the Defendant to refute the statement from the Department's representative, and in consideration of the evidence from the Department that the Defendant used her EBT card in the same place and at the same time someone used Mr. [REDACTED] EBT card, testimony and evidence demonstrates the Defendant committed an Intentional Program Violation.

CONCLUSIONS OF LAW

- 1) The Defendant used the EBT card of her brother while he was incarcerated, from November 2014 through January 2015. The Department presented clear and convincing evidence that Defendant committed an Intentional Program Violation by doing this, pursuant to the Code of Federal Regulations 7 CFR §273.16.
- 2) The Department must impose a disqualification penalty. The disqualification period for a first offense is one year.

DECISION

It is the ruling of the Hearing Officer that the Defendant committed an Intentional Program Violation. She will be disqualified from participating in SNAP for one year, beginning in August 2015.

ENTERED this 29th Day of June 2015.

**Stephen M. Baisden
State Hearing Officer**