



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

August 31, 2015



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-2012

Dear Mr. [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: Cassandra Burns, Repayment Investigator

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

████████████████████,

**Defendant,**

v.

**Action Number: 15-BOR-2012**

**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 May 8, 2015. 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 Section 273.16. The hearing was convened on August 19, 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 twelve months.

At the hearing, the Department appeared by Cassandra Burns, 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 §273.16
- M-2 Form ES-FS-5, Food Stamp (SNAP) Claim Determination
- M-3 Written statement from ██████████, ██████████ WV, dated May 22, 2014
- M-4 Written statement from ██████████, ██████████ WV, dated May 23, 2014
- M-5 Returned Electronic Benefits Transfer (EBT) card and receipt
- M-6 Written statement from ██████████, WV, dated July 1, 2014
- M-7 Written statement from ██████████, WV, dated May 22, 2014
- M-8 Form DFA-RR-1, Rights and Responsibilities Form, signed by Defendant on September 4, 2012

M-9 Copy of IG-IFM-ADH-waiver, Waiver of Administrative Disqualification Hearing form, and IG-IFM-ADH-Ltr, Notice of Intent to Disqualify form, sent to Defendant on April 16, 2015

**Defendant's Exhibits**

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence during 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 Department's representative contended the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because he intentionally helped his girlfriend sell \$200 in SNAP benefits for cash in May, 2014.
- 2) On May 8, 2014, the Defendant called [REDACTED] of [REDACTED] WV, to tell her he had financial troubles and needed money. He offered to sell Ms. [REDACTED] his girlfriend's Electronic Benefits Transfer (EBT) card authorizing SNAP benefit purchases in the amount of \$200. He offered to sell the card for \$105 (Exhibit M-3). Ms. [REDACTED] agreed to the offer and sent her boyfriend to a pre-arranged meeting location to complete the transaction.
- 3) The boyfriend, [REDACTED] of [REDACTED] WV, met the Defendant at the pre-arranged location and paid him \$105 for the EBT card (Exhibit M-4). Ms. [REDACTED] subsequently learned that the card had been cancelled or deactivated and she could not access the value of the SNAP benefits it supposedly represented (Exhibit M-3).
- 4) On May 22, 2014, Ms. [REDACTED] returned the EBT card (Exhibit M-5) to the WV DHHR, [REDACTED] office, and reported the incident to an investigator there. Workers at the [REDACTED] office determined that the card had been issued to [REDACTED], the Defendant's girlfriend.

**APPLICABLE POLICY**

Pursuant to the Code of Federal Regulations 7 CFR §273.16, an Intentional Program Violation shall consist of a SNAP recipient 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.

WV IMM Chapter 20.2.C.2 provides that once an IPV (Intentional Program Violation) is established, a disqualification penalty is imposed on the AG members who committed the IPV. The penalties are as follows: First Offense – one year disqualification; Second Offense – two years disqualification; Third Offense – permanent disqualification.

### **DISCUSSION**

The Department's representative provided copies of written statements from Ms. [REDACTED] (Exhibit M-3), Mr. [REDACTED] (Exhibit M-4), and Ms. [REDACTED] daughter (Exhibit M-6) and grandson (Exhibit M-7) wherein they described the events as stated above. A Front-End Fraud Unit (FEFU) worker at the [REDACTED] office of the WV DHHR wrote the statements, and the four witnesses signed them.

Although the evidence against the Defendant may be circumstantial, in the absence of rebuttal evidence or testimony from him, the Department has provided clear and convincing evidence that the Defendant engaged in the trafficking of SNAP benefits by selling his girlfriend's EBT card on May 8, 2014.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to the Code of Federal Regulations and Common Chapters Manual, the Defendant engaged in the trafficking of SNAP benefits by selling his girlfriend's EBT card for \$105 on May 8, 2014.
- 2) The Department presented clear and convincing evidence that Defendant committed an Intentional Program Violation by trafficking in SNAP benefits, in violation of the Code of Federal Regulations 7 CFR §273.16. The Department must impose a disqualification penalty.
- 3) The disqualification for a first offense IPV is one year.

### **DECISION**

It is the ruling of the Hearing Officer that the Defendant committed an Intentional Program Violation. He will be disqualified from participating in SNAP for one year, beginning October 1, 2015.

**ENTERED this 31<sup>st</sup> Day of August 2015.**

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**Stephen M. Baisden  
State Hearing Officer**