



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 23, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-2708

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
State Hearing Officer
Member, State Board of Review

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

cc: Andrew LaCara, WV DHHR

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

██████████,

Defendant,

v.

Action Number: 15-BOR-2708

**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 August 3, 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 §273.16. The hearing was convened on September 10, 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 Movant appeared by Andrew LaCara (Mr. LaCara), Repayment Investigator. The Defendant failed to appear. Mr. LaCara was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- D-1 West Virginia Department of Health and Human Resources Application for Benefits, and Rights and Responsibilities, signed and dated April 29, 2014
- D-2 Print-out of Case Comments from Defendant's eRAPIDS case from April 29, 2014 – November 20, 2014
- D-3 Sworn statement from ██████████, signed and dated November 3, 2014
- D-4 Print-out of Text messages from 304-270-7782 from September 1, 2014, September 2, 2014, September 4, 2014, September 9, 2014, September 10, 2014, September 11, 2014, September 12, 2014, September 14, 2014, September 18, 2014, and September 25, 2014

- D-5 eRAPIDS Case Summary for [REDACTED] and [REDACTED]
- D-6 JPMorganChase EBT Administrative System Transaction History for cardholder [REDACTED], from June 5, 2014 – October 4, 2014
- D-7 JPMorganChase EBT Administrative System Card History for cardholder [REDACTED], from August 30, 2011 – October 20, 2014
- D-8 Food Stamp Claim Determination form, es-fs-5, July 2014 – September 2014
- D-9 Advance Notice of Administrative Disqualification Hearing Waiver, ig-ifm-ADH Ltr, dated July 20, 2015
- D-10 Request for an Administrative Disqualification Hearing, ig-br-30, dated August 3, 2015
- D-11 Electronic Disqualified Recipient System (eDRS) query

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 trafficking SNAP benefits, and requested that a SNAP penalty of twelve (12) months be imposed against her. (Exhibit D-10)
- 2) The Board of Review sent to the Defendant notice of the Administrative Disqualification Hearing on August 6, 2015, by US Postal Service first class mail. The notice was sent to [REDACTED]. This is identified by Movant's representative as being Defendant's last known mailing address on file. The hearing was scheduled to begin at 10:00 a.m. on September 10, 2015, and as of 10:15 a.m., 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 a.m., and was conducted without the Defendant in attendance.
- 3) The Movant received a complaint that the Defendant was selling her SNAP benefits for cash. An investigation was conducted regarding this allegation.
- 4) The Movant obtained a statement from [REDACTED] (Ms. [REDACTED]) attesting that she had exchanged cash for use of the Defendant's EBT card benefits. In total, Ms. [REDACTED] reported she purchased \$430 of SNAP benefits from the Defendant in exchange for \$220 cash in the month of September.
- 5) Ms. [REDACTED] who had the Defendant's EBT card, relinquished possession of it to Mr. LaCara. (Exhibits D-3 and D-4)

- 6) The Defendant's EBT card #5077200011933408 was reported lost on September 11, 2014. A new card was issued, #5077200014875523, which was reported lost on September 19, 2014. A new card was issued, #5077200014899002, which was reported lost on September 30, 2014. A new card was issued, #5077200014929353 which was replaced on October 1, 2014 with card #5077200014936937. (Exhibit D-7)
- 7) The Movant contended that the Defendant committed an Intentional Program Violation by way of trafficking her SNAP benefits. The Movant requested a twelve month SNAP penalty and repayment of SNAP benefits of \$1320 for the months of July, August, and September 2014. (Exhibit D-8)

APPLICABLE POLICY

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

IMM §20.2.C.2 defines an IPV and establishes that IPV's include: making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. Once an IPV has been established, a disqualification period must be imposed on the Assistance Group (AG) member who committed the violation. Furthermore, IPV claims must be established for trafficking-related offenses. Claims arising from trafficking-related offenses are the value of the trafficking benefits as determined by the individual's admission, adjudication, or documentation that forms the basis of the trafficking determination.

IMM §9.1 sets forth the penalties for individuals found guilty of an IPV as follows: First Offense, twelve (12) month disqualification; Second Offense, twenty-four (24) month disqualification; Third Offense, permanent disqualification.

DISCUSSION

The Movant presented clear and convincing evidence that the Defendant trafficked her September SNAP benefits by selling her EBT card for cash. This act meets the definition of an Intentional Program Violation. The Defendant failed to appear to refute the evidence presented by the Movant.

CONCLUSIONS OF LAW

- 1) The Defendant trafficked her SNAP benefits and, therefore, has committed an Intentional Program Violation.
- 2) As this is the Defendant's first offense, she is subject to a 12-month SNAP disqualification.

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 twelve (12) months to begin effective November 1, 2015.

ENTERED this 23rd day of September 2015.

**Lori Woodward
State Hearing Officer**