



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

October 19, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2893

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: Brian Shreve, Repayment Investigator

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

██████████,

Defendant,

v.

Action Number: 15-BOR-2893

**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 25, 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 October 15, 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 24 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 Transaction History from the Electronic Benefits Transfer (EBT) account of the Defendant, listing purchases dated July 3, 2015, to July 28, 2015
- M-3 Still photographs from the security cameras for the ██████████ WV, ██████████, dated July 10, 2015, 2:19 PM and 2:21 PM, with purchase receipt in amount of \$106.55
- M-4 Still photographs from the security cameras for the ██████████ WV, ██████████, dated July 22, 2015, 12:36 PM and 12:38 PM, with purchase receipt in amount of \$12.66

- M-5 Still photographs from the security cameras for the [REDACTED] WV, [REDACTED], dated July 28, 2015, 6:09 PM and 6:13 PM, with purchase receipt in amount of \$2.00
- M-6 inROADS internet SNAP application, e-signed by Defendant on December 7, 2014
- M-7 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 July 30, 2015

Defendant's Exhibits:

None

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 Department's representative contends the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for two years because he allowed persons to access his EBT card in order to use his SNAP benefits in return for money or something of monetary value.
- 2) Someone used the Defendant's EBT card at the [REDACTED] WV, [REDACTED] on July 10, 2015, spending \$106.55 in SNAP benefits, on July 22, 2015, spending \$12.66 in SNAP benefits, and July 28, 2015, spending \$2.00 in SNAP benefits (Exhibit M-2). The Department's representative argued that the Defendant did not make these purchases.
- 3) According to the Defendant's SNAP application form (Exhibit M-6), the Defendant has no authorized representative or payee for his benefits, and he is the only person in his SNAP assistance group.

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 submitted as evidence a series of time-stamped photographic stills taken from the security cameras at the [REDACTED] WV, [REDACTED], along with purchase receipts for each of the three purchases allegedly depicted by the photographs. The Department's representative testified that the purchase receipts correspond to the purchases made at each of the three terminals.

The first group of two photographic stills was taken at 2:19 PM and 2:21 PM on July 10, 2015 (Exhibit M-3). Included with the stills is a purchase receipt in the amount of \$106.55 (Exhibit M-3, page 3). The Department's representative submitted an EBT Usage History print-out from the Defendant's EBT SNAP record indicating a purchase in the amount of \$106.55 at 2:19 PM on July 10, 2015 (Exhibit M-2). The first of the two photographs, taken at 2:21 PM, depicts a woman exiting a store pushing a shopping cart and the second, taken at 2:19 PM, depicts a cashier working at her terminal. The second photograph does not show the purchaser.

The second group of stills was taken at 12:36 PM and 12:38 PM on July 22, 2015, and includes a purchase receipt in the amount of \$12.66 (Exhibit M-4). The purchase receipt indicates the purchase occurred on "TE 02" or terminal 2. The EBT Usage History print-out (Exhibit M-2) indicates a purchase of \$12.66 made at 12:37 PM on July 22, 2015. The first of the two photographs, taken at 12:38 PM, depicts a woman exiting a store pushing a shopping cart and the second, taken at 12:36 PM is a top-down view of someone making a purchase at a retail point-of-sale terminal. The second photograph shows the purchaser but it is difficult to determine if the woman in the first photograph is the person making the purchase in the second one. The second photograph clearly shows that the purchase was made at a terminal with the number 2 on it.

The third group of stills was taken at 6:09 PM and 6:13 PM on July 28, 2015, and includes a purchase receipt in the amount of \$2.00 (Exhibit M-5). The purchase receipt indicates the purchase occurred on "TE 24" or terminal 24. The EBT Usage History print-out (Exhibit M-2) indicates a purchase of \$2.00 made at 6:10 PM on July 28, 2015. The first of the two photographs, taken at 6:09 PM, depicts two women making a purchase at a retail terminal. One is using a cane. The photograph clearly shows that the purchase was made at a terminal with the number 24 on it. The second, taken at 6:13 PM, depicts two women exiting a store. One is pushing a shopping cart, and the other is walking with a cane.

For the first group of photographs and receipt, Exhibit M-3, the evidence does not show that the depicted purchases were made by a person to whom the Defendant gave his EBT card. One cannot see a terminal number on the photograph depicting the transaction, nor can one see the person who is making the purchase.

For the second group of photographs and receipt, Exhibit M-4, the evidence also does not show that the depicted purchases were made by a person to whom the Defendant gave his EBT card.

One can see a terminal number on the photograph, terminal 2, however, the top-down view obscures the identity of the person who is making the purchase. One cannot tell if the person making the purchase is the same person from the first of the two photographs standing in front of the store, nor can one tell the gender of the person making the purchase.

However, the third group of photographs and receipt indicates that the purchases depicted on the photographs were made using the Defendant's EBT card, and the EBT Usage History print-out (Exhibit M-2) confirms this. The first of two photographs clearly show the identifying terminal number, 24, which corresponds to the terminal number on the purchase receipt.

The Defendant is a single male and is the only person included in his SNAP assistance group. There are no other authorized card holders, representatives or protective payees listed in his SNAP assistance group. Therefore, the people depicted in the photographs in Exhibit 5 were not authorized users of his EBT card. They could not have accessed his SNAP benefits if he had not given them his personal identification number.

CONCLUSIONS OF LAW

- 1) The Defendant permitted others to access his SNAP benefits by using his EBT card, on July 28, 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 second offense is two years.

DECISION

It is the ruling of the Hearing Officer that the Defendant committed an Intentional Program Violation by permitting others to access his SNAP benefits through his EBT card. He will be disqualified from participating in SNAP for two years, beginning in December 2015.

ENTERED this 19th Day of October 2015.

**Stephen M. Baisden
State Hearing Officer**