



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 5, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-3072

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Cassie Burns, [REDACTED] County DHHR

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

██████████,

Defendant,

v.

Action Number: 15-BOR-3072

**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 September 17, 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 October 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 should thus be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Department appeared by Cassie Burns, Repayment Investigator. Appearing as a witness for the Department was Danielle Jarrett, Repayment Investigator. The Defendant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations Title 7 §273.16
- M-2 United States Department of Agriculture Food and Nutrition Service
Administrative Case for ██████████
- M-2a Photographs of ██████████
- M-2b Notification of SNAP Disqualification of ██████████ dated February 6, 2015
- M-2c EBT Transactions from ██████████ from October 2014-December 2014

- M-2d Survey Form for Food and Nutrition Service Authorized Agent dated January 13, 2015
- M-3 Electronic Benefit Transfer (EBT) Card History and Transaction History from January 2014-February 2015
- M-4 SNAP/Medicaid Review Form dated June 18, 2002
- M-5 SNAP Application and Rights and Responsibilities Form dated December 30, 2014
- M-6 West Virginia Income Maintenance Manual §20.2
- M-7 Advance Notice of Administrative Disqualification Hearing Waiver signed September 14, 2015

Defendant’s Exhibits:

- D-1 Receipt from [REDACTED] dated February 4, 2015 and Defendant’s Statement of Items Purchased

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 alleged that the Defendant committed an Intentional Program Violation by trafficking her SNAP benefits and requested that a SNAP penalty of twelve (12) months be imposed against her.
- 2) [REDACTED] store was disqualified (M-2b) by the United States Department of Agriculture Food and Nutrition Service (USDA-FNS) division for trafficking SNAP benefits in February 2015. The Defendant was implicated (M-2c) as trafficking her SNAP benefits with [REDACTED] store based on a pattern of purchases made with her EBT card.
- 3) The Department contended that the Defendant made multiple purchases (M-3) in excess of \$150 using her SNAP benefits at [REDACTED], which would be impossible based upon the size of the grocery store and the food items available for purchase. This coupled with purchases made at [REDACTED] store within minutes of each other was indicative of the Defendant “running a tab” at the store, and paying this account off with her SNAP benefits.

APPLICABLE POLICY

Code of Federal Regulations 7 CFR §273.16, establishes that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts, violating the Food

Stamp Program, or any State statute for the purpose of acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system has committed an Intentional Program Violation (IPV).

West Virginia Income Maintenance Manual §20.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.

West Virginia Income Maintenance Manual §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.

Code of Federal Regulations 7 CFR §271.2 defines trafficking as the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via EBT cards, card numbers and person identification numbers, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone.

DISCUSSION

Testimony from Investigator Danielle Jarrett indicated that [REDACTED] store was better defined as a convenience store in regards to the type of and amount of food items available for sale. Investigator Jarrett observed during her visit to [REDACTED] store that there were no shopping carts or baskets present, confirming that making large purchases there would be impossible. Investigator Jarrett testified to observing several refrigerators of alcoholic beverages and reiterated that little food items were in stock.

Based on the photographs of [REDACTED] submitted as evidence, the store had bulk fruits, vegetables and meats available for sale. The store also contained canned food items and dry goods.

The Defendant denied trafficking her SNAP benefits and argued that [REDACTED] was conveniently located to her residence, and without transportation she made the majority of her food purchases there. The Defendant denied using her EBT card for anything other than food purchases.

A review of the Defendant's EBT transactions revealed that the Defendant frequented [REDACTED] store almost daily. Despite making several large purchases at [REDACTED], most of the Defendant's purchases did not exceed \$50. Consecutive purchases made at [REDACTED] were in smaller amounts, consistent with the Defendant's claim that she had forgotten to purchase something.

The Department relied heavily upon federal government's investigation of [REDACTED] in its case against the Defendant, which failed to establish that the Defendant made purchases at the store other than for eligible food items with her SNAP benefits.

CONCLUSIONS OF LAW

The burden of proof regarding the Defendant's alleged trafficking rested with the Department. Based on the information submitted, the Department failed to establish that the Appellant trafficked her SNAP benefits.

DECISION

It is the decision of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation.

ENTERED this 5th day of November 2015

**Kristi Logan
State Hearing Officer**