



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

February 4, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 14-BOR-3200

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: Robert Lane, Criminal Investigator

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

██████████,

Defendant,

v.

Action Number: 14-BOR-3200

**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 22, 2014. 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 §273.16. The hearing was convened on January 8, 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 Robert Lane, Criminal Investigator. The Defendant appeared *pro se*. Appearing as a witness for the Defendant was her daughter ██████████. The participants were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations, 7 CFR §273.16
- M-2 WV Income Maintenance Manual (IMM) Chapter 1, §1.4
- M-3 WV IMM Chapter 9, §9.1
- M-4 WV IMM Chapter 20, §20.2
- M-5 Letter from the U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program, to ██████████ dated January 14, 2014
- M-6 Letter from the U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program, to ██████████ dated April 1, 2014

- M-7 Mail-in SNAP telephone review form, signed and dated by Defendant on October 4, 2012
- M-8 Electronic Benefits Transfer (EBT) Transaction History, listing EBT purchases from January 1, 2013, to May 1, 2014
- M-9 Written statement from Defendant, dated August 11, 2014

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 twelve months because she trafficked her SNAP benefits.
- 2) The US Department of Agriculture's (USDA) Food and Nutrition Service (FNS), which has oversight of SNAP, notified the WV DHHR that the FNS had disqualified the [REDACTED] of [REDACTED], from being a SNAP vendor because the business had trafficked in SNAP benefits. FNS provided the DHHR with a list of SNAP recipients deemed to have trafficked their SNAP benefits at the [REDACTED]. The Defendant was one of those individuals, identified by her SNAP usage at that retail establishment.
- 3) The FNS sent a notification letter (Exhibit M-5) to the [REDACTED] on January 18, 2014, informing the owners and/or managers that the business was charged with trafficking in SNAP, due to "clear and repetitive patterns of unusual, irregular and inexplicable activity" for this type of establishment. The notification letter contained a list of the suspected illegal purchases, identified by the terminal or cash register number, date and time, last four digits of the purchaser's EBT card, purchase amount, and an indication as to whether the card was "swiped" or passed through an electronic card reader or a clerk manually entered the card number.
- 4) The FNS sent a second notification letter (Exhibit M-6) to the [REDACTED] on April 1, 2014, informing the owners and/or managers that the FNS determined SNAP trafficking had occurred at the business, that the business was permanently disqualified as a SNAP vendor, and that the business was subject to a monetary fine and possible prosecution.
- 5) The Department's representative identified three purchases made at the [REDACTED] by the Defendant, identified by her card number, which indicate trafficking. The first purchase was on October 1, 2013, in the amount of \$70.73, and the card was "swiped." The second

purchase was on November 1, 2013, in the amount of \$38.39, and the card was “swiped.” The third purchase was on November 3, 2013, in the amount of \$42.91, and the card was “swiped.” The Department’s representative stated that these purchases were identified as trafficking because they were all high-amount transactions. He added that the [REDACTED] is a small convenience store in a rural area of [REDACTED], and it would not be likely that a SNAP recipient would purchase a large amount of his or her groceries at such a store.

- 6) The Department’s representative submitted as evidence a print-out from the Defendant’s EBT account, a Transaction History screen (Exhibit M-8) that indicated the Defendant made several purchases from the [REDACTED] from January 1, 2013, to May 1, 2014. The print-out indicates the last four digits of the Defendant’s EBT card corresponds to those identified by the FNS as trafficking purchases on the January 2014 letter to the [REDACTED] (Exhibit M-5). The print-out lists the three purchases listed above, from October and November 2013. It also lists other purchases from the [REDACTED], not indicated on the January 2014 notification letter from the FNS (Exhibit M-5). Most of these purchases are for a less amount than the three described above, but one, dated April 1, 2014, was for \$39.93.
- 7) The Defendant submitted a written statement to the Department’s representative on August 11, 2014 (Exhibit M-9). This statement reads in part as follows:

Me and my son [sic] . . . live together and he is on my food stamps [now SNAP]. Sometimes [he] uses my EBT card. I have shopped at the [REDACTED] in [REDACTED] before. I usually do the majority of my shopping at the [REDACTED] – I would not have used my card at [REDACTED] – [Defendant’s son] would use my card with my grandson. I don’t ever remember using my card at the [REDACTED] in [REDACTED] I don’t give my card to anyone else to use. Probably [Defendant’s son] has used my EBT card at the [REDACTED] for snacks late at night.

- 8) The Defendant stated that the written statement from her reads “I usually do the majority of my shopping at the [REDACTED] . . .” She stated that she does not do this. She stated she did not remember making this statement. She stated she gave her card to her son “to buy snacks.” Her witness, her daughter, stated that the [REDACTED] is the only 24-hour convenience store near her mother’s home, and it is quite possible to spend \$70 there when one buys bread, sandwich meat, cheese, chips, and candy and soft drinks for children. She stated that her brother had the right to use her mother’s EBT card because he is included in the SNAP assistance group, and her mother could not control what he did with it.
- 9) The Department’s representative agreed that the Defendant’s son had the right to use his mother’s EBT card with her permission after she had given him the Personal Identification Number or PIN for the card. However, he added, the Defendant did have the responsibility for the actions taken by the person she permitted to use it.

APPLICABLE POLICY

WV Income Maintenance Manual Chapter 20, §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.

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

Although the Department's case against the Defendant appears to be circumstantial, the list of transactions the FNS included on its notification letter to the [REDACTED] (Exhibit M-5) included three purchases made by the Defendant for \$70.73, \$38.39 and \$42.91 respectively. The \$38- and \$42-dollar purchases may or may not be legitimate, as the Defendant's witness pointed out in her statement. However, the \$70 purchase lends credence to the Department's position that trafficking had taken place. Even if the Defendant did not personally traffic her SNAP benefits, as the primary person in her SNAP assistance group, she is responsible for the actions of anyone to whom she gives access to her card.

Therefore, in the absence of any evidence or testimony to the contrary, the Department proved by clear and convincing evidence that the Defendant committed an Intentional Program Violation (IPV) by trafficking in SNAP benefits.

CONCLUSIONS OF LAW

- 1) Pursuant to the Code of Federal Regulations 7 CFR §273.16, the Department established that the Defendant or someone whom she authorized to access her SNAP benefits trafficked in these benefits at a small convenience store in rural [REDACTED], which had been identified by the USDA's FNS as a retail business that had engaged in this activity. The Defendant committed an Intentional Program Violation by doing this.
- 2) The Department must impose a disqualification penalty. The disqualification penalty 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 twelve months, beginning March 1, 2015.

ENTERED this 4th Day of February 2015.

**Stephen M. Baisden
State Hearing Officer**