



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St.
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

April 18, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1368

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,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

cc: Tammie Drumheller, WVDHHR

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

██████████,

Defendant,

v.

Action Number: 16-BOR-1368

**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 February 29, 2016. 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 April 4, 2016.

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, Respondent appeared by Tammie Drumheller, Front End Fraud Investigator. The Defendant failed to appear. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Trafficking Appointment Letter dated January 26, 2016
- D-2 Electronic Benefit Transaction (EBT) History for the period of 10/6/15 through 12/15/15
- D-3 Photograph showing a female subject using Defendant's EBT card on 12/5/15 at 01:53:59
- D-4 Receipt (copy) from purchase made on 12/5/15 at 01:53:59 – last four digits of Defendant's EBT card ending in 8120
- D-5 Photograph of female leaving the store after using Defendant's EBT card on 12/5/15 at 01:54:46
- D-6 Photograph of a male subject using the EBT card on 12/5/15 at 01:57:50
- D-7 Receipt (copy) from purchase made on 12/5/15 at 01:58:15 – last four digits of Defendant's EBT card ending in 8120

- D-8 Photograph of male subject leaving the store after using the EBT card on 12/5/15 at 1:58:36
- D-9 Advanced Notice of Administrative Disqualification Hearing Waiver dated 2/8/16
- D-10 Waiver of Administrative Disqualification Hearing
- D-11 Supplemental Nutrition Assistance Program (SNAP) Application/Review completed with the Rights and Responsibilities acknowledged by Defendant by his signature on 6/24/15
- D-12 Form PRC2 – SNAP 6 or 12 month contact form – completed by Defendant on 12/15/15 – with his current mailing address
- D-13 WV Income Maintenance Manual §20.2

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) A request for an Administrative Disqualification Hearing was received by the Board of Review from the West Virginia Department of Health and Human Resources, hereinafter Movant, on February 29, 2016. Movant contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a period of 12 months.
- 2) Notification of the April 4, 2016 hearing was mailed to the Defendant on March 2, 2016, via First Class U. S. Mail, as the Defendant is a current recipient of public assistance benefits and resides at a confirmed address.
- 3) The hearing convened as scheduled at 9 a.m., and as of 9:15 a.m., the Defendant failed to appear. As set forth in the Code of Federal Regulations, found at §7 CFR 273.16 (e) (4), and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 740.20), the hearing was conducted without the Defendant in attendance.
- 4) Evidence proffered by the Movant reveals that the Defendant is a member of a one (1)-person SNAP Assistance Group (AG) and that he does not have any authorized representatives – he is the only individual permitted to use his Electronic Benefit Transaction (EBT) card.
- 5) On December 15, 2015, suspicious transactions (Exhibit D-2) were identified on Appellant’s EBT Transaction History report. Exhibits D-3, D-4 and D-5 confirm that a female subject made purchases with Appellant’s EBT card on December 15, 2015.

- 6) The Defendant signed his Combined Application/Review Forms and the Rights and Responsibilities forms (Exhibit D-11), certifying that the information he provided was true and correct, and acknowledged the following:

I understand that SNAP benefits are to be used by or on behalf of my assistance group and me to purchase food or seeds. I cannot sell my SNAP benefits or use someone else's benefits for myself. The SNAP benefits will not be used for any other purpose.

I understand that I cannot do, or attempt to do the following either in public, in private, or online: buy, sell, trade, steal or otherwise use SNAP benefits for monetary gain or other considerations; purchase food in containers with deposits and discard the product to receive cash refund deposits; and purchase or sell food originally purchased with SNAP benefits for monetary gain or other considerations. Any of these actions is considered SNAP trafficking.

I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive Food Stamp benefits as follows: First Offense – one year; Second Offense – two years; Third Offense – permanently. In addition, I will have to repay any benefits received for which I was not eligible.

By signing the Rights and Responsibilities form, the Defendant certified that he read, understood, and accepted the rights and responsibilities, and that all of the information provided was true and correct.

APPLICABLE POLICY

West Virginia Common Chapters Manual §740.11.D and the Code of Federal Regulations 7 CFR Section §273.16 establish that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts has committed an Intentional Program Violation (IPV). Committing 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.

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

West Virginia Income Maintenance Manual §20.2.C.2 requires that once an IPV has been established, a disqualification period must be imposed on the AG member(s) who committed the violation.

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.

DISCUSSION

SNAP regulations provide that buying, selling, stealing, or otherwise affecting an exchange of SNAP benefits issued and accessed via EBT cards, card numbers and personal identification numbers, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone, constitutes trafficking of SNAP benefits. A review of the undisputed evidence confirms that the Defendant gave an unauthorized female subject access to his EBT card, and pin number, resulting in the verified purchase made by her on December 15, 2015.

CONCLUSIONS OF LAW

- 1) The Code of Federal Regulations defines trafficking as the buying, selling, stealing, or otherwise affecting an exchange of SNAP benefits issued and accessed via EBT cards, card numbers and personal identification numbers, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone.
- 2) The Defendant was notified timely of the April 4, 2016 Administrative Disqualification Hearing, but failed to appear and refute the evidence submitted in support of an IPV. The evidence confirms the Defendant provided his EBT card and personal identification numbers to an unauthorized female subject that otherwise affected an exchange of SNAP benefits via his EBT card. This action constitutes SNAP trafficking.
- 3) There is clear and convincing evidence that the Defendant committed an Intentional Program Violation as defined in the SNAP policy and regulations.
- 4) Pursuant to SNAP policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first offense is 12 months.

DECISION

The Department's proposal to apply a 12-month benefit disqualification is **upheld**. The Defendant will be disqualified from participation in the SNAP for 12 months beginning June 1, 2016.

ENTERED this ____ day of April 2016.

**Thomas E. Arnett
State Hearing Officer**