



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

April 14, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1449

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: Cassandra Burns, WV DHHR

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

████████████████████,

Defendant,

v.

Action Number: 16-BOR-1449

**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 March 7, 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 13, 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 (IPV) and therefore should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Movant appeared by Cassandra Burns, Criminal Investigator with Investigations and Fraud Management (IFM). The Defendant appeared *pro se*. Appearing as witness for the Defendant was her mother, ██████████. The parties were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- D-1 Electronic Code of Federal Regulations, Title 7, §273.16
- D-2 2015 United States Department of Agriculture (USDA) investigation materials and sanction determination for ██████████ (██████)
- D-3 JPMorganChase EBT Administration System Transaction History printout from January 6, 2014 to September 8, 2015 of Defendant's EBT card
- D-4 Signed statement given to IFM investigators dated October 5, 2015
- D-5 West Virginia Department of Health and Human Resources SNAP review form and Rights and Responsibilities, signed and dated October 30, 2013

D-6 West Virginia Income Maintenance Manual (IMM) §20.2

D-7 Advance Notice of Administrative Disqualification Hearing Waiver, ig-ifm-ADH-Ltr, dated February 23, 2016, and Waiver of Administrative Disqualification Hearing, ig-ifm-ADH-waiver

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 of SNAP benefits, and requested that a SNAP penalty of twelve (12) months be imposed against her.
- 2) In February 2015, the USDA made a determination that [REDACTED] of [REDACTED] West Virginia, ([REDACTED]) violated SNAP regulations due to an analysis of its EBT transactions which were found to establish clear and repetitive patterns of unusual, irregular, and inexplicable activity for their type of firm. Consequently, [REDACTED] was charged with SNAP trafficking and was permanently disqualified as a SNAP retailer. (Exhibit D-2)
- 3) The Defendant's Electronic Benefits Transfer (EBT) account was identified by the USDA investigation as having a questionable transaction due to it being excessively large for the type and size of [REDACTED] and was therefore suspect for possible SNAP trafficking. (Exhibit D-2)
- 4) During an investigation regarding the Defendant's EBT card transaction of January 8, 2014 with [REDACTED] the Defendant gave a signed statement to IFM investigators stating, "The last time the [REDACTED] [REDACTED] came to the house ... they said I can get food before the SNAP was on the card." The Defendant further stated to the investigators that "At first I was scared because I didn't trust them because I didn't know if they were going to use all of my Stamps [SNAP benefits] so I went out and used the rest so they wouldn't use all the rest of my stamps." (Exhibit D-4)
- 5) Additionally, during the course of IFM's investigation of the Defendant, it found indications of possible trafficking of SNAP benefits due to questionable back-to-back purchases made at [REDACTED] grocery store ([REDACTED]) within minutes of one another for large amounts on several different occasions in 2014:
 - February 8, 2014 at 10:35 for \$128.57 and at 10:37 for \$126.01;
 - April 8, 2014 at 21:32 for \$89.58 and at 21:35 for \$87.42 and on April 9, 2014 at 17:29 for \$99.11;
 - May 8, 2014 at 18:40 for \$317.56 and at 18:41 for \$310.76; and
 - December 8, 2014 at 19:31 for \$23.19 and at 19:54 for \$130.57. (Exhibit D-3)

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.

WV Common Chapters, §740.11.D defines an IPV as: 1) intentionally making a false or misleading statement, or misrepresenting, concealing or withholding facts; or 2) 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.

WV Common Chapters, §740.22.K explains that the Hearing Official shall base the determination of IPV on clear and convincing evidence that demonstrates that the Defendant committed, and intended to commit, an IPV as defined in WV Common Chapters §740.11.D. The Hearing Official shall render a decision after weighing the evidence and testimony presented given at the hearing. In rendering a decision, the Hearing Official shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and controlling court orders.

DISCUSSION

In a separate investigation, the USDA found [REDACTED] of [REDACTED] West Virginia was trafficking SNAP benefits and, therefore, permanently disqualified it from participating as a SNAP retailer. In its investigation, the USDA identified the Defendant's EBT account as containing a questionable purchase which was deemed to be suspect due to amount of the purchase relative to the size and inventory of [REDACTED]. An investigation of the Defendant ensued by the Movant who determined that the Defendant had participated in SNAP trafficking by using her EBT benefits on credit. Additionally, in its investigation of the Defendant's SNAP purchases, the Movant determined that the Defendant made questionable purchases at [REDACTED] grocery store on several different occasions in 2014 with back-to-back transactions which were

made within minutes of each other for large amounts. The Movant's representative, Cassandra Burns (Ms. Burns) testified these types of transactions are indicative of illegal SNAP activity.

The Defendant does not deny she made a purchase with [REDACTED] on credit. She proffers that she only has an eleventh (11th) grade education and did not understand what she was doing was considered a credit purchase and was against SNAP policy. The Defendant did state that the [REDACTED] representatives told her she could pay for the purchase before she received her SNAP benefits (Exhibit D-4), and that she gave them her EBT card number and pin. She further stated that she immediately went out after she received her January SNAP benefits and spent all but \$420 of her benefits just in case the [REDACTED] representatives would use more than the agreed upon \$420. (Exhibits D-3 and D-4)

Ms. Burns testified that the Defendant has been a participant in the SNAP program on and off since 2002 and has signed the Rights and Responsibilities form on several different occasions. Exhibit D-5, page 7 of 10, specifically states, in pertinent part, "I understand that I may not use my SNAP benefits to purchase food on credit. This means I cannot pay for food already purchased or food to be received in the future."

There is little doubt the Defendant understood the transaction she made with [REDACTED]. She knowingly received food from [REDACTED] in a promise to pay at a later date – a date after her SNAP benefits were loaded onto her EBT card. The Movant showed by clear and convincing evidence that the Defendant knowingly committed an Intentional Program Violation by purchasing from [REDACTED] on credit in January 2014.

As to the back-to-back transactions at [REDACTED], the Defendant explains that her daughter would "push the cart" and she would pay separately for daughter's purchases so that she could "regulate" what she and her daughter purchased. The Defendant's witness testified that her granddaughter would "push the cart" because she wanted to act "grown up". The Defendant's explanation of this oddity is unconvincing and is suspect. The Defendant's explanation does not adequately address why these transactions are for almost the exact same large amounts. However, mere suspicion of odd transactions without any other corroborating evidence of how these types of transactions constitute trafficking as defined in state and federal statutes does not meet the burden of clear and convincing evidence required to establish that an Intentional Program Violation occurred.

CONCLUSION OF LAW

The Movant showed by clear and convincing evidence that the Defendant participated in SNAP trafficking by knowingly using her EBT SNAP benefits on credit with [REDACTED] in January 2014.

DECISION

It is the ruling of the State Hearing Officer that the Defendant did commit an Intentional Program Violation. The Defendant will be disqualified from participation in SNAP for a period of twelve (12) months to begin effective May 1, 2016.

ENTERED this 14th day of April 2016.

Lori Woodward, State Hearing Officer