



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

May 12, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1457

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: Defendant'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-1457

**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 May 3, 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 failed to appear. The Department's representative was 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 Food and Nutrition Service (USDA-FNS) division investigation materials and sanction determination for ██████████
██████████
- D-3 JPMorganChase EBT Administration System Transaction History printout of Defendant's EBT card from January 1-28, 2014
- D-4 West Virginia Department of Health and Human Resources (DHHR) SNAP review form and Rights and Responsibilities, signed and dated December 3, 2013
- D-5 West Virginia Income Maintenance Manual (IMM) §20.2

D-6 Advance Notice of Administrative Disqualification Hearing Waiver, ig-ifm-ADH-Ltr, dated February 24, 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) The Defendant was notified of the hearing by scheduling order sent on March 15, 2016. The Defendant failed to appear for the hearing or provide good cause for her failure to do so. In accordance to 7 CFR §273.16(e)(4) and West Virginia Department of Health and Human Resources' Common Chapters Manual, §740.20, the hearing was held without the Defendant in attendance.
- 3) The USDA-FNS division investigated [REDACTED], West Virginia, ([REDACTED]) for possible trafficking of SNAP benefits. It determined that [REDACTED] was a door-to-door meat and seafood delivery service that also has a small 200-square-foot storefront in [REDACTED] West Virginia. The storefront did not have any storage space to keep an inventory of frozen meats and seafood, and items were purchased on-line or made by calling for a delivery. (Exhibit D-2)
- 4) In April 2015, the USDA-FNS division permanently disqualified [REDACTED] as a SNAP retailer for trafficking SNAP benefits. In its analysis of [REDACTED] EBT transactions, the USDA-FNS division found that the EBT transactions established clear and repetitive patterns of unusual, irregular, and inexplicable activity for their type of retail business. (Exhibit D-2)
- 5) The Defendant's Electronic Benefits Transfer (EBT) account was identified by the USDA-FNS division investigation as having a questionable transaction because it was excessively large for the type and size of [REDACTED], and was flagged as possible SNAP trafficking activity, which IFM was requested to investigate. (Exhibit D-2)
- 6) The Defendant's EBT account showed a keyed-in transaction on January 3, 2014 by [REDACTED] for the amount of \$300. (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.

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 personal identification numbers, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone.

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, §740.22.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

The USDA-FNS division found [REDACTED], West Virginia trafficked SNAP benefits and permanently disqualified the business from participating as a SNAP retailer. During the course of its investigation, the USDA-FNS division identified the Defendant's EBT account as containing a questionable keyed-in transaction on January 3, 2014, in the amount of \$300 from [REDACTED] which was deemed to be suspect of SNAP trafficking.

An investigation of the Defendant ensued by IFM who determined that the Defendant had intentionally violated SNAP program policy by the large transaction made with [REDACTED] on January 3, 2014. The evidence showed that [REDACTED] was a door-to-door meat and seafood delivery service that also had a small 200-square-foot storefront in [REDACTED] West Virginia, and items were purchased on-line or made by calling for a delivery. The transaction which

Defendant made with [REDACTED] was a large purchase for the type and size of store, which would indicate a credit-type purchase as shown by the evidence. The Defendant failed to appear to refute or explain this transaction.

The Movant's witness testified that the Defendant has been a participant in the SNAP program on and off since 2011 and has signed the Rights and Responsibilities form on several different occasions. Exhibit D-4, page 7 of 10, statement number 1, emphasizes, 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." Additionally, statement number 4 on page 8 of 10 recites the penalties for committing an intentional program violation.

The Movant showed by clear and convincing evidence that the Defendant knowingly committed an Intentional Program Violation by entering into a purchase-on-credit transaction with [REDACTED] on January 3, 2014 with her EBT card benefit as defined by state and federal regulations.

CONCLUSIONS OF LAW

- 1) There is clear and convincing evidence that the Defendant committed an Intentional Program Violation as defined in the SNAP policy and regulations.
- 2) The Defendant was notified timely of the March 15, 2016 Administrative Disqualification Hearing, but failed to appear and refute the evidence submitted in support of an IPV. The evidence confirms the Defendant used her EBT card for a purchase made on credit with her SNAP benefits with [REDACTED] in violation of state and federal regulations.
- 3) 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

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 June 1, 2016.

ENTERED this 12th day of May 2016.

Lori Woodward, State Hearing Officer