



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-1458

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-1458

**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 Services (USDA-FNS) division investigation materials and sanction determination for ██████████
- D-3 JPMorganChase EBT Administration System Transaction History printout from March 2, 2013 to February 7, 2014 of Defendant's EBT card
- D-4 Signed, sworn, witnessed statement given to IFM investigators by ██████████, dated October 5, 2015

- D-5 Signed, sworn, and witnessed statement given to IFM investigators by [REDACTED], dated October 5, 2015
- D-6 Signed, sworn, and witnessed statement given to IFM investigators by [REDACTED], dated October 6, 2015
- D-7 West Virginia Department of Health and Human Resources Rights and Responsibilities, signed and dated June 1, 2012
- D-8 West Virginia Income Maintenance Manual (IMM) §20.2
- D-9 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) 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 several questionable transactions because they were excessively large for the type and size of [REDACTED], and was therefore flagged

as possible SNAP trafficking activity, which IFM was requested to investigate. (Exhibit D-2)

- 6) During the course of IFM's investigation, the Defendant was interviewed and provided a signed, sworn and witnessed statement to the IFM investigators on October 5, 2015 and reported purchasing [REDACTED] merchandise from the Defendant on credit with the EBT card. (Exhibit D-5)
- 7) [REDACTED] (Mr. [REDACTED] the Defendant's husband also gave a signed, sworn and witnessed statement that the Defendant purchased [REDACTED] merchandise with both a payment prior to receiving the goods and/or with by receiving the merchandise with a future debit of the EBT card. (Exhibit D-4)
- 8) [REDACTED] (Ms. [REDACTED]), the Defendant's daughter, provided a signed, sworn and witnessed statement that the Defendant received merchandise from [REDACTED] prior to payment with her EBT card, with a later debit to the Defendant's EBT card. (Exhibit D-6)
- 9) The Defendant's EBT transaction history from March 2, 2013 to February 7, 2014, showed several large transactions with [REDACTED]. (Exhibit D-3)
- 10) The Defendant has been a recipient of SNAP benefits on and off since 1999 and signed the Rights and Responsibilities form acknowledging that she understood that EBT SNAP benefits could not be used for purchase of food on credit. (Exhibit D-7)

APPLICABLE POLICY

Pursuant to the Code of Federal Regulations (CFR), 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.I directs the Hearing Official to rule on the admissibility of any evidence presented by either party at a hearing. In ruling on the admissibility of evidence, the Hearing Official shall consider the factors of relevancy, reliability, and repetitiveness. Additionally, WV Common Chapters §740.22.J states that the West Virginia Rules of evidence do not apply in these hearings, but may be considered when determining admissibility of evidence so that the truth may be ascertained and the proceedings justly determined.

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-FNS division found [REDACTED], West Virginia was trafficking SNAP benefits and, therefore, permanently disqualified it from participating as a SNAP retailer. In its investigation, the USDA-FNS division 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 intentionally violated the SNAP program. The Movant found that the Defendant purchased merchandise on credit for a promise of future payment from her EBT card benefits.

The Movant asserted that as a long-time recipient of SNAP benefits, the Defendant was well aware of the parameters of SNAP EBT card usage and the penalties that may be imposed for violation of those terms. The Defendant has been a recipient of SNAP benefits on and off since 1999. SNAP Rights and Responsibility documents are signed each time an individual makes a SNAP application or a recertification of benefits. The first statement acknowledged on this form specifically states, "I understand that I may not use my EBT SNAP benefits to purchase food on credit. This means I cannot pay for food already purchased or food to be received in the future."

The Movant presented three signed, sworn and witnessed statements, one of which was from the Defendant herself, reporting that merchandise was purchased from an employee of [REDACTED] on credit with a later debit to her EBT account and/or a payment for delivery of merchandise in the future. The identity of each of these individuals was verified, and the statements were signed under oath, certifying the truth and correctness of the statements given, and was witnessed by a third party:

- Mr. [REDACTED] reported that an employee of [REDACTED] would “always swipe the card [EBT], but she never gave us any cases [of food]. She still owes us money and a case of food.” Mr. [REDACTED] also stated to the investigators that the [REDACTED] employee “would mostly give us the meat and then run the card later and debit it for when the SNAP benefits came.” (Exhibit D-4)
- The Defendant admitted to purchasing merchandise from [REDACTED] on credit with the EBT card, reporting that the [REDACTED] employee “would come to my house. I would buy food on credit ... I only bought food on credit once or twice.” Ms. [REDACTED] also stated that the Defendant “offered to give me money if I ever wanted to sell my SNAP at \$.50 on the dollar.” (Exhibit D-5)
- Ms. [REDACTED] also admitted that to purchasing [REDACTED] merchandise on credit stating that the [REDACTED] employee “comes around to sell meat”, and that “sometimes she [the [REDACTED] employee] would come the day before and copy my card, ‘run it the next day’ she would ask me when my stamps [SNAP benefits] came in. She would give me the meat because sometimes when you are low on meat it helps, and if you don’t want to do that she would say she was coming to get the meat she left in advance.” Ms. [REDACTED] also attested to the [REDACTED] employee allowing the Defendant to “get food on credit”. (Exhibit D-6)

Policy allows the Hearing Officer to consider any evidence as long it is relevant, reliable, and appropriate to ascertain the truth and make a just determination. In reviewing the statements given, they are found to be reliable as the identification of each individual was made prior to taking the statements by the investigators, an oath was administered to each declarant, and all the statements were signed and witnessed by a third party, and corroborated by other evidence submitted by the Movant.

Each of the transactions on the Defendant’s EBT card made by [REDACTED] were made on the same day of the Defendant’s receipt of SNAP benefits for large amounts: 4/2/13 for \$302; 5/2/13 for \$400; 6/2/13 for \$305; 7/2/13 for \$406; 8/2/13 for \$258; 10/2/13 for \$377; 12/2/13 for \$298; and 1/2/14 for \$148. When reviewing the documentation of the type of business that [REDACTED] conducted without any storage capacity for merchandise, the statement given by the Defendant and her husband and daughter, all corroborate the Defendant purchased merchandise from [REDACTED] on credit and/or by pre-payment, in violation of state and federal SNAP regulations. The Defendant failed to appear to refute these allegations.

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 purchases made on credit and/or pre-payment with her SNAP benefits with [REDACTED] from March 2013 to January 2014 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