



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

June 6, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-1517

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: Brian Shreve, Repayment Investigator

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

██████████,  
**Defendant,**

v.

**Action Number: 16-BOR-1517**

**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 15, 2016. 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 Section 273.16. The hearing was convened on May 25, 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 thus should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for twelve months.

At the hearing, the Department appeared by Brian Shreve, Repayment Investigator. The Defendant did not appear. All participants were sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- M-1 Code of Federal Regulations §273.16
- M-2 Social Security Administration – WV Department of Corrections Prisoner Match Information for ██████████
- M-3 EBT card Transaction History and EBT card Transaction Detail for Defendant, detailing a purchase made on January 3, 2016
- M-4 EBT card Transaction History and EBT card Transaction Detail for ██████████, detailing a purchase made on January 3, 2016

- M-5 DFA-RR-1, Rights and Responsibilities form from Defendant's SNAP case record, signed and dated by Defendant on November 26, 2015
- M-6 SNAP Case Recordings, dated June 12, 2015 through January 15, 2016
- M-7 Copy of IG-IFM-ADH-waiver, Waiver of Administrative Disqualification Hearing form, and IG-IFM-ADH-Ltr, Notice of Intent to Disqualify form, sent to Defendant on February 18, 2016

**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 contended the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because she used her incarcerated boyfriend's EBT card to purchase food for her household. The boyfriend received his SNAP benefits in a separate case.
- 2) The Defendant's boyfriend, [REDACTED], was incarcerated at the [REDACTED] [REDACTED] on November 6, 2015 (Exhibit M-2). He remains incarcerated as of this date.
- 3) On January 3, 2016, someone used Mr. [REDACTED] EBT card to make a food purchase at the [REDACTED] WV [REDACTED]. According to the EBT card Transaction History and Transaction Detail (Exhibit M-4), this purchase was made at 7:50:31 PM, at point-of-sale terminal #24261001.
- 4) On January 3, 2016, the Defendant used her EBT card to make a food purchase at the [REDACTED] WV [REDACTED]. According to the EBT card Transaction History and Transaction Detail (Exhibit M-3), this purchase was made at 7:50:40 PM, also at point-of-sale terminal #24261001.
- 5) The Defendant did not appear at the hearing to refute the allegation that she used her boyfriend's EBT card.

**APPLICABLE POLICY**

WV IMM 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 Section 273.16, an Intentional Program Violation shall consist of a SNAP recipient 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 or access device.

### **DISCUSSION**

The Department's representative provided evidence to support the Department's argument that the Defendant trafficked in SNAP benefits by using her boyfriend's EBT card to purchase food for herself and her household. They boyfriend was incarcerated at the time.

The Department's representative submitted the EBT card Transaction History and Transaction Detail, indicating that on January 3, 2016, someone used the boyfriend's EBT card at a particular terminal at the [REDACTED] at 7:50 and 31 seconds PM (Exhibit M-4). He submitted the EBT card Transaction History and Transaction Detail for the Defendant, indicating that on January 3, 2016, at 7:50 and 40 seconds PM (Exhibit M-3), she used her EBT at the same store and at the same terminal.

There is no direct evidence that the Defendant was the person who used her boyfriend's EBT card at the [REDACTED] on January 3, 2016. However, the two purchases occurred in the same store at the same terminal, approximately ten seconds apart. 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 provided clear and convincing evidence that the Defendant trafficked in SNAP benefits by using the EBT card of her boyfriend to purchase food for herself and her household. She committed an Intentional Program Violation by doing so.
- 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 one year, beginning July 1, 2016.

**ENTERED this 6<sup>th</sup> Day of June 2016.**

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**Stephen M. Baisden  
State Hearing Officer**