



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

October 31, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2458

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Cassandra Burns, Department Representative

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

████████████████████,

Defendant,

v.

Action Number: 16-BOR-2458

**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 August 8, 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 September 15, 2016.

The matter before the Hearing Officer arises from a request by the Movant 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 12 months.

At the hearing, the Movant appeared by Cassandra Burns. Observing but not participating in the hearing was ██████████. The Defendant was notified of the hearing but failed to appear, resulting in the hearing being held in the Defendant's absence. All witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- D-1 Code of Federal Regulations, 7 CFR §273.16
- D-2 Screen prints detailing the Defendant's SNAP card history, including the months of January 2016 through June 2016
- D-3 Screen print from the Movant's data system listing the individuals included in the Defendant's SNAP assistance group
- D-4 Copy of a vendor receipt for a May 14, 2016 SNAP transaction from the Defendant's case; Printed images from surveillance video taken by the SNAP vendor at the time of that transaction

- D-5 Screen prints detailing the Defendant's SNAP transaction history and details for a May 14, 2016 transaction
- D-6 Copy of a vendor receipt for a May 27, 2016 SNAP transaction from the Defendant's case; Printed images from surveillance video taken by the SNAP vendor at the time of that transaction
- D-7 Screen prints detailing the Defendant's SNAP transaction history and details for a May 27, 2016 transaction
- D-8 Code of Federal Regulations, 7 CFR §271.2
- D-9 Background check and printed photographs of the Defendant
- D-10 Background check and printed photographs of the Defendant's mother
- D-11 SNAP application/review documents, dated December 17, 2015
- D-12 West Virginia Income Maintenance Manual (WVIMM), §20.2
- D-13 Administrative Disqualification Hearing documents
- D-14 Appointment letter dated July 1, 2016

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 Defendant has been a recipient of SNAP benefits since at least December 17, 2015. (Exhibit D-11)
- 2) The Defendant requested seven (7) replacements of the card – or access device – used for SNAP transactions between the months of January 2016 and June 2016. (Exhibit D-2)
- 3) The Defendant and her mother were the sole authorized users of the SNAP access card for the Defendant's case between the months of January 2016 and June 2016. (Exhibit D-3)
- 4) The Defendant's SNAP access card was used for a transaction on May 14, 2016. (Exhibit D-4)
- 5) The printed photographs of the person conducting the May 14, 2016 SNAP transaction do not appear to match the printed photographs of either individual authorized to use the Defendant's SNAP access card. (Exhibits D-4, D-9 and D-10)
- 6) The Defendant's SNAP access card was used for a transaction on May 27, 2016. (Exhibit D-6)

- 7) The printed photographs of the person conducting the May 27, 2016 SNAP transaction do not appear to match the printed photographs of either individual authorized to use the Defendant's SNAP access card. (Exhibits D-6, D-9 and D-10)
- 8) The Movant contended that the Defendant committed an Intentional Program Violation (IPV) of SNAP by allowing others to use her SNAP access card. The Movant requested this hearing for the purpose of making that determination.
- 9) The Defendant has no prior IPV offenses.

APPLICABLE POLICY

The Code of Federal Regulations, 7 CFR §273.16(c) defines an IPV as having “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).”

The West Virginia Income Maintenance Manual (WVIMM), Chapter 9.1.A.2.h, indicates a first offense IPV results in a one year disqualification from SNAP.

DISCUSSION

The Movant requested this ADH to determine if the Defendant committed an IPV and if so, to set the disqualification penalty for the offense. The Movant must show, by clear and convincing evidence, that the actions of the Defendant meet the codified IPV definition. The Defendant did not appear for the hearing, and as such could not dispute facts presented by the Movant.

The Movant alleged that two transactions conducted using the Defendant's SNAP EBT card, or “access device,” were not completed by the Defendant, thereby meeting the IPV definition as an act violating the proper use of SNAP access devices. The Movant relied on printed photographs – both from the SNAP vendor in question and from background checks obtained on the Defendant and her mother – to establish the SNAP violation. The printed photographs from the SNAP transactions do not appear to match those of either the Defendant or her mother, and since no other individuals were authorized to use the Defendant's SNAP benefits the Movant clearly established a SNAP violation. The irregular pattern of SNAP access card replacement was sufficient to indicate intent. Policy requires a twelve month disqualification for a first-offense IPV.

CONCLUSION OF LAW

Because the action of the Defendant constitutes an IPV, the Movant must disqualify the Defendant from receipt of SNAP benefits, and because the IPV is a first offense the disqualification period is one year.

DECISION

It is the finding of the State Hearing Officer that the Defendant committed an Intentional Program Violation. The Defendant will be disqualified from receipt of SNAP benefits for a period of one year, beginning December 1, 2016.

ENTERED this ____ Day of October 2016.

**Todd Thornton
State Hearing Officer**