



June 13, 2017

[REDACTED]

RE: [REDACTED] WV DHHR
ACTION NO.: 17-BOR-1063

Dear Mr. [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**

[REDACTED]

Defendant,

v.

Action Number: 17-BOR-1063

**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 [REDACTED] requested by the Movant on January 13, 2017. 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 initially scheduled for March 16, 2017, but was continued and reconvened on May 4, 2017.

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. 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 Printed phone screen image
- D-3 Statement from [REDACTED] signed November 3, 2016
- D-4 Statement from [REDACTED] signed November 3, 2016
- D-5 Transaction history regarding the Defendant's SNAP benefits
- D-6 Code of Federal Regulations, 7 CFR §271.2
- D-7 Additional transaction history regarding the Defendant's SNAP benefits
- D-8 SNAP application documents, signed by the Defendant August 1, 2016
- D-9 SNAP application documents, signed by the Defendant August 23, 2016
- D-10 West Virginia Income Maintenance Manual (WVIMM), §20.2
- D-11 Appointment letters to the Defendant's household, dated December 5, 2016
- D-12 ADH documents to the Defendant's household

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 was a recipient of SNAP benefits in the month of September 2016. (Exhibit D-5)
- 2) The Movant investigated a referral alleging SNAP trafficking by the Defendant.
- 3) The Movant contended that the Defendant committed an Intentional Program Violation (IPV) of SNAP through the trafficking of his SNAP access card. The Movant requested this hearing for the purpose of making that determination.

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 Code of Federal Regulations, 7 CFR §271.2 defines trafficking as including “attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.”

The West Virginia Income Maintenance Manual (WVIMM), §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 contended the Defendant committed an IPV by trafficking his SNAP benefits. The Movant must show, by clear and convincing evidence, that the actions of the Defendant meet the IPV and trafficking definitions set by code. The Defendant did not appear for the hearing, and as such could not dispute facts presented by the Movant.

The Movant did not establish any action by the Defendant that met either the trafficking or IPV definitions in code. The Movant provided evidence, testimony and arguments in support of its contention that the Defendant’s spouse committed an IPV. The Defendant and his spouse were in the same SNAP assistance group. The Movant did not present any convincing evidence

linking the Defendant to any SNAP trafficking by his spouse, either “directly, indirectly, in complicity or collusion with others.” The proposed IPV against the Defendant cannot be affirmed.

CONCLUSION OF LAW

Because the Movant failed to provide clear and convincing testimony and evidence that the Defendant committed an act that meets the codified IPV definition, the Movant must not apply the corresponding SNAP disqualification penalty.

DECISION

It is the finding of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation.

ENTERED this ____ Day of June 2017.

Todd Thornton
State Hearing Officer