



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
203 East Third Avenue  
Williamson, WV 25661

Jim Justice  
Governor

Bill J. Crouch  
Cabinet Secretary

March 31, 2017



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-1170

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: Appellant'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: 17-BOR-1170**

**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 January 31, 2017. 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 March 21, 2017.

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. The participants were sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- M-1 Code of Federal Regulations 7 CFR Section 273.16
- M-2 Print-out from the WV Department of Corrections, Regional Jail and Correctional Facility Authority, indicating beginning incarceration date for ██████████
- M-3 EBT Card Transaction History and Transaction Detail for ██████████, listing purchases made from January 3, 2016, through March 3, 2016
- M-4 EBT Card Transaction History and Transaction Detail for Defendant, listing purchases made from January 3, 2016, through March 3, 2016
- M-5 SNAP mail-in review form (DFA-SNAP-1), signed by Defendant on June 23, 2015

- M-6 West Virginia Income Maintenance Manual (WV IMM) Chapter 20, §20.2
- M-7 Form ES-FS-5, Food Stamp (now SNAP) Claim Determination
- M-8 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 April 11, 2016
- M-9 SNAP Case Recordings, dated June 23 - June 24, 2015

**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 ex-boyfriend's EBT card to purchase food for her household. The boyfriend received his SNAP benefits in a separate case.
- 2) The Defendant's ex-boyfriend, [REDACTED], was incarcerated at the [REDACTED] [REDACTED] on January 7, 2016 (Exhibit M-2). He remained incarcerated at least through April 6, 2016.
- 3) On March 3, 2016, someone used Mr. [REDACTED] EBT card to make a food purchase at a [REDACTED] [REDACTED] store in [REDACTED] WV, at terminal #94481012. According to the EBT card Transaction History and Transaction Detail (Exhibit M-3), this purchase was made at 9:49 AM.
- 4) On March 3, 2016, the Defendant used her EBT card to make a food purchase at the same [REDACTED] store in [REDACTED] WV, as identified by the "Merchant" section of the EBT card Transaction Detail (Exhibit D-4). According to the EBT card Transaction History and Transaction Detail, this purchase was made at 9:41 AM, also at terminal #94481012.
- 5) On March 3, 2016, someone used Mr. [REDACTED] EBT card to make a food purchase at a [REDACTED] store in [REDACTED] WV, at terminal #45086701. According to the EBT card Transaction History and Transaction Detail (Exhibit M-3), this purchase was made at 10:34 AM.
- 6) On March 3, 2016, the Defendant used her EBT card to make a food purchase at the same [REDACTED] store in [REDACTED] WV, as identified by the "Merchant" section of the EBT card Transaction Detail (Exhibit D-4). According to the EBT card Transaction History and Transaction Detail, this purchase was made at 10:35 AM, also at terminal #45086701.

- 7) On March 3, 2016, someone used Mr. [REDACTED] EBT card to make a food purchase at [REDACTED] in [REDACTED] WV, at terminal #86186401. According to the EBT card Transaction History and Transaction Detail (Exhibit M-3), this purchase was made at 12:03 PM.
- 8) On March 3, 2016, the Defendant used her EBT card to make a food purchase at the same [REDACTED] in [REDACTED] WV, as identified by the “Merchant” section of the EBT card Transaction Detail (Exhibit D-4). According to the EBT card Transaction History and Transaction Detail, this purchase was made at 12:00 noon, also at terminal #86186401. The EBT card Transaction History and Transaction Detail also records that the Defendant made a second purchase at the [REDACTED] on March 3, 2016, at 12:04 PM, at terminal #86186401.
- 9) The Defendant did not appear at the hearing to refute the allegation that she used her ex-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 ex-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 for both the Defendant’s ex-boyfriend, indicating that on March 3, 2016, someone used his EBT card at three different grocery or food stores in [REDACTED] WV (Exhibit M-3). He submitted the EBT card Transaction History and Transaction Detail for the Defendant, indicating that on March 3, 2016 (Exhibit M-3), she used her EBT at the same three stores and at the same terminals. The EBT card Transaction History print outs for both Mr. [REDACTED] and the Defendant indicate the purchases occurred no more than ten minutes apart.

There is no direct evidence that the Defendant was the person who used her boyfriend's EBT card at the three grocery stores identified on the EBT card Transaction History print outs for March 3, 2016. However, the purchases occurred in the same stores at the same terminals, at no more than ten minutes apart in each of the three locations. 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 incarcerated ex-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 May 1, 2017.

**ENTERED this 31<sup>st</sup> Day of March 2017.**

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**Stephen M. Baisden  
State Hearing Officer**