



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

June 16, 2017



RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1615

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,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

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

cc: Cassandra Burns, Criminal Investigator

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

██████████,

Defendant,

v.

Action Number: 17-BOR-1615

**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 April 10, 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 June 15, 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 Cassandra Burns, Criminal 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 United States Department of Agriculture Food and Nutrition Services (USDA-FNS) investigation materials and sanction determination for ██████████, ██████████ WV, dated February 16, 2016
- M-3 Electronic Benefits Transfer (EBT) Card Transaction History for Defendant, listing purchases made from May 20, 2014 through November 5, 2016
- M-4 inROADS SNAP application, dated April 30, 2014
- M-5 West Virginia Income Maintenance Manual (WV IMM) Chapter 20, §20.2

M-6 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 March 30, 2017

Defendant's Exhibits

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence during 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 he trafficked his SNAP benefits.
- 2) The US Department of Agriculture – Food and Nutrition Services (USDA-FNS), which has oversight of SNAP, notified the WV DHHR that the USDA-FNS had disqualified [REDACTED] of [REDACTED] WV, from being a SNAP vendor because the business had trafficked in SNAP benefits (Exhibit M-2, page 31).
- 3) [REDACTED] is a small convenience store, approximately 1,500 square feet in size, which sells ice, beer and soda, and a few incidental-need items like bread and milk. [REDACTED] sells items such as fruits and vegetables in limited numbers and amounts.
- 4) From June 1, 2014 through November 30, 2016, the Defendant made nine purchases at [REDACTED], spending \$238.59 in SNAP benefits (Exhibit M-3). Among these purchases were two, both made on November 11, 2015, within a five-minute time span, in even-dollar amounts. Also among these purchases were three, all made on December 5, 2015, within a five-minute time span, all for \$35.99.
- 5) The Department's representative argued that the two even-dollar purchases and the three equal-amount purchases made within five minutes at [REDACTED] identify the Appellant's spending pattern as indicative of SNAP trafficking.
- 6) The Defendant did not appear at the hearing to refute the SNAP trafficking allegations.

APPLICABLE POLICY

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.

WV IMM Chapter 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 year disqualification; Third Offense – permanent disqualification.

DISCUSSION

██████████ is a small rural convenience store that sells a variety of items, including canned foods, beer, soda, ice, dairy products, breads and other incidental-need products. The store does sell fresh fruits and vegetables, but the photographs included in the documents from the USDA-FNS (Exhibit M-2) show only a limited amount of them displayed for sale.

The Department's representative testified that the Defendant violated the Code of Federal Regulations 7 CFR §273.16, in that he was engaged in the trafficking of his SNAP benefits. She argued that the even-dollar purchases the Defendant made at ██████████ (Exhibit M-3, page 15) are indicative of SNAP trafficking. Of the nine purchases from ██████████ from June 2014 to November 2016, two of them were for even-dollar amounts, made within a five-minute time span. The Department's representative argued that the identical-amount purchases the Defendant made at ██████████ (Exhibit M-3, page 16) also are indicative of SNAP trafficking. She testified that on December 5, 2015, the Defendant made three purchases within a five-minute time span, each for an identical amount, \$35.99.

The evidence provided by the Department shows the Defendant used his EBT card nine times to spend \$238.59 in SNAP benefits at ██████████ throughout the repayment period of June 2014 to November 2016. The Department's evidence of the two even-dollar purchases does not indicate trafficking behavior. Even though these purchases were made within a five-minute time span, this could be attributed to mere coincidence.

However, the three equal-amount purchases made on December 5, 2015, for \$35.99 do indicate trafficking behavior. Three identical purchases made within a five-minute time span at the same location go beyond mere coincidence. The Department has provided clear and convincing evidence and testimony that the Defendant engaged in SNAP trafficking at ██████████, ██████████ WV.

CONCLUSIONS OF LAW

- 1) Pursuant to the Code of Federal Regulations 7 CFR §273.16, the Department established that the Defendant trafficked in SNAP benefits at ██████████, ██████████ WV, WV, which had been identified by the USDA-FNS as a retail business that had

engaged in this activity. The Defendant committed an Intentional Program Violation by doing this.

- 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. He will be disqualified from participating in SNAP for one year, beginning August 1, 2017.

ENTERED this 16th Day of June 2017.

**Stephen M. Baisden
State Hearing Officer**