



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Jim Justice  
Governor

Bill J. Crouch  
Cabinet Secretary

June 13, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-1671

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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: Addison Hamilton, [REDACTED] County DHHR

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

██████████,

**Defendant,**

v.

**Action Number: 17-BOR-1671**

**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 20, 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 convened on June 8, 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 should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for twelve (12) months.

At the hearing, the Movant appeared by Addison Hamilton, Criminal Investigator. The Defendant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- M-1 Code of Federal Regulations – 7 CFR §271.2
- M-2 Code of Federal Regulations – 7 CFR §273.16
- M-3 Unites States Department of Agriculture (USDA) Food and Nutrition Service (FNS) Notice of Disqualification dated February 17, 2016, USDA-FNS Store Survey and Store Visit Sketch for ██████████
- M-4 Redacted Printout of EBT Transactions with ██████████
- M-5 EBT Transaction History for Defendant from May 2015-November 2015
- M-6 Statement from ██████████ dated March 22, 2017

- M-7 Statement from [REDACTED] dated March 22, 2017
- M-8 Application for Benefits and Rights and Responsibilities Form dated April 22, 2015
- M-9 West Virginia Income Maintenance Manual §20.6
- M-10 West Virginia Income Maintenance Manual §20.2

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 Movant alleged that the Defendant committed an Intentional Program Violation by trafficking his SNAP benefits and requested that a SNAP penalty of twelve (12) months be imposed against him.
- 2) [REDACTED] was disqualified by the United States Department of Agriculture Food and Nutrition Service (USDA-FNS) division for trafficking SNAP benefits in April 2016. The Defendant was implicated as allegedly trafficking his SNAP benefits with [REDACTED], based on a pattern of purchases made with his Electronic Benefit Transfer (EBT) card (Exhibits M-4 and M-5).
- 3) [REDACTED] is a rural, 1,800-square-foot convenience store which carries a limited amount of fresh meats, dairy items, breads, snacks, frozen foods, and various sundries. [REDACTED] did not provide shopping carts or baskets for customer use, and the USDA-FNS survey of the store's inventory documented empty shelving (Exhibit M-3).
- 4) The Movant contended that the Defendant had multiple purchases deemed to be excessively large for this type of retail store and based on the items available for purchase at [REDACTED] (Exhibit M-5).
- 5) The Movant alleged that the Defendant was trafficking his SNAP benefits with the store, either purchasing non-food items or "running a tab" at the store, and paying this account using his EBT card (Exhibit M-5).
- 6) The Defendant visited [REDACTED] on thirteen (13) occasions during the investigative period. The Defendant had two separate purchases on May 11, 2015, totaling \$104.98; three separate purchases on May 12, 2015, totaling \$38.85; three separate purchases on May 15, 2015, totaling \$47.69; two separate purchases on May 17, 2015, totaling \$28.09; one purchase on September 9, 2015, for \$31.80 and one purchase on September 10, 2015, for \$55.08. The only consecutive purchase occurred on May 12, 2015 (Exhibit M-5).

### **APPLICABLE POLICY**

Code of Federal Regulations 7 CFR §273.16, establishes that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts, violating the Food Stamp Program, or any State statute for the purpose of acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system has committed an Intentional Program Violation (IPV).

Code of Federal Regulations 7 CFR §271.2 defines trafficking as the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via EBT cards, card numbers and personal identification numbers, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone.

West Virginia Income Maintenance Manual §20.C.2 defines an IPV and establishes that IPV's include: making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. Once an IPV has been established, a disqualification period must be imposed on the Assistance Group (AG) member who committed the violation. Furthermore, IPV claims must be established for trafficking-related offenses. Claims arising from trafficking-related offenses are the value of the trafficking benefits as determined by the individual's admission, adjudication, or documentation that forms the basis of the trafficking determination.

West Virginia Income Maintenance Manual §9.1 sets forth the penalties for individuals found guilty of an IPV as follows: First Offense, twelve (12) month disqualification; Second Offense, twenty-four (24) month disqualification; Third Offense, permanent disqualification.

### **DISCUSSION**

Federal regulations define trafficking as the exchange of SNAP benefits accessed through an EBT card for cash or consideration other than eligible food. An Intentional Program Violation occurs when an individual is found to have trafficked his or her SNAP benefits.

The Defendant denied trafficking his SNAP benefits with [REDACTED]. The Defendant testified that he stayed with his mother, who resided in [REDACTED] West Virginia, temporarily when she was recovering from surgery. The Defendant stated that it was during that time that he shopped at [REDACTED] since it was close to his mother's residence and he did not have transportation. The Defendant contended he did not shop there before or after that time period since it was not close to his residence in [REDACTED] West Virginia. The Defendant argued that the proprietors may have trafficked with other customers, but they would not have done so with him as he was not a regular customer.

The Movant alleged that the Defendant's made several large purchases at [REDACTED], which would be impossible based on the limited quantities of food available for purchase. However, when taking into consideration that rural convenience stores typically have higher prices on items for sale, the amount of SNAP benefits spent at [REDACTED] coupled with the small number of times the Defendant shopped at the store, is not indicative of paying off a tab with the store, and did not otherwise suggest misuse of the Defendant's SNAP benefits.

The evidence submitted by the Movant did not establish a questionable pattern of EBT usage for the Defendant or establish that the Defendant made purchases at the store other than for eligible food items with his SNAP benefits.

### **CONCLUSIONS OF LAW**

- 1) An Intentional Program Violation occurs when an individual is found to have trafficked his or her SNAP benefits.
- 2) The Movant failed to prove by clear and convincing evidence that the Defendant trafficked his SNAP benefits with [REDACTED].
- 3) The Defendant did not commit an Intentional Program Violation.

### **DECISION**

It is the finding of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation and to **reverse** the proposal of the Movant to impose penalty against the Defendant's Supplemental Nutritional Assistance Program benefits.

**ENTERED this 13<sup>th</sup> day of June 2017**

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**Kristi Logan**  
**State Hearing Officer**