



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 6, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-1674

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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: Danita Bragg, [REDACTED] County DHHR

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

██████████,

**Defendant,**

v.

**Action Number: 17-BOR-1674**

**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 18, 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 May 23, 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 should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for twelve (12) months.

At the hearing, the Department appeared by Danita Bragg, 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 §273.16
- M-2 Unites States Department of Agriculture (USDA) Food and Nutrition Service (FNS) Survey and Photographs, Notice of Disqualification dated February 17, 2016 and Electronic Benefit Transactions for ██████████
- M-3 Electronic Benefit Transaction History for Defendant from January 2013-June 2016
- M-4 Statement from ██████████ dated March 22, 2017
- M-5 Statement from ██████████ dated March 22, 2017

- M-6 Screen Print of Local SNAP Retailers retrieved from [www.fns.usda.gov](http://www.fns.usda.gov)
- M-7 SNAP Review Form signed November 27, 2014
- M-8 West Virginia Income Maintenance Manual §20.2
- M-9 Suspect Interview Appointment Letter dated September 16, 2016
- M-10 Advance Notice of Administrative Disqualification Hearing Waiver dated April 10, 2017, and Waiver of Disqualification Hearing signed April 13, 2017

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 her SNAP benefits and requested that a SNAP penalty of twelve (12) months be imposed against her.
- 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 trafficking her SNAP benefits with [REDACTED] based on a pattern of purchases made with her Electronic Benefit Transfer (EBT) card (Exhibit M-2).
- 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 photographs taken of the store's inventory showed some empty shelving (Exhibit M-2).
- 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-3).
- 5) The Movant alleged that the Defendant was trafficking her SNAP benefits with the store, either purchasing non-food items or "running a tab" at the store, and paying this account off with her SNAP benefits.

### **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 purchasing items on credit with [REDACTED], and paying the account off with her EBT card. The Defendant also denied purchasing non-food items with her SNAP benefits. The Defendant admitted that she was not financially responsible with her SNAP benefits in shopping at [REDACTED] where items were priced higher than other grocery stores, but testified that [REDACTED] was close to her residence. The Defendant testified that [REDACTED] sold cold deli pizzas, and once purchased with SNAP benefits, would be baked for the customers. The Defendant explained her household purchased these pizzas often, and was unaware that this was not an allowable purchase with SNAP benefits.

A review of the Defendant's EBT usage from 2013-2016 documented that the Defendant shopped at [REDACTED] daily, spending on average \$35 a day. Although same-day transactions occurred over the years, these transactions did not appear to be indicative of paying off a tab with the store, and did not otherwise suggest misuse of the Defendant's SNAP benefits.

The Movant failed to prove by clear and convincing evidence that the Defendant trafficked her SNAP benefits with [REDACTED].

## **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 her 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 6<sup>th</sup> day of June 2017**

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**Kristi Logan  
State Hearing Officer**