



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Jim Justice
Governor

BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Bill J. Crouch
Cabinet Secretary

July 12, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1683

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: Juna Woodall, [REDACTED] County DHHR

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

[REDACTED],

Defendant,

v.

Action Number: 17-BOR-1683

**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 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 July 6, 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 Juna Woodall, Repayment 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 United 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, and Photographs of [REDACTED], Printout of Electronic Benefit Transaction (EBT) History for [REDACTED] and Declaration of Completeness of Record dated May 13, 2016
- M-3 EBT Transaction History for Defendant from January 2013-May 2016

- M-4 Statement from [REDACTED] dated March 22, 2017
- M-5 Statement from [REDACTED] dated March 22, 2017
- M-6 SNAP Contact Form dated August 20, 2014
- M-7 West Virginia Income Maintenance Manual §20.2
- M-8 Advance Notice of Administrative Disqualification Hearing Waiver dated April 10, 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 in April 2016 for trafficking SNAP benefits. The Defendant was implicated as allegedly trafficking her SNAP benefits with [REDACTED], based on a pattern of purchases made with her EBT card (Exhibits M-2 and M-3).
- 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 and photographs of the store's inventory documented 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-2).
- 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 using her EBT card (Exhibit M-2).
- 6) The Movant noted that the Defendant had a recurring purchase of \$26.98 on six (6) separate dates with [REDACTED], indicating that she was paying this fixed amount towards a store credit (Exhibit M-2).

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 paying off store credit or purchasing non-food items with her EBT card. The Defendant testified that [REDACTED] had certain food items in stock that she preferred to larger grocery stores, and when buying those same items from month to month, the total purchase price of those items would not change.

A review of the Defendant's EBT usage with [REDACTED] documented that the Defendant spent an average of \$25 per transaction using her EBT card and had a total of five (5) same-day transactions with [REDACTED] over a three (3) year period. The Defendant made most her larger purchases with other grocery stores.

The amount of SNAP benefits spent by the Defendant at [REDACTED] is not excessive, when taking into consideration that rural convenience stores typically have higher priced items for sale. Additionally, the small number of times the Defendant had same-day transactions, coupled with the amount of money spent at [REDACTED] 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 her 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 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 12th day of July 2017

**Kristi Logan
State Hearing Officer**