



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 21, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1686

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: Juna Woodall, [REDACTED] County DHHR

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

██████████,

Defendant,

v.

Action Number: 17-BOR-1686

**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 June 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 failed to appear. The Movant's representative was 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 (EBT) for Horton's Convenience Center
- M-3 EBT Transaction History for Defendant from February 2015-January 2017
- M-4 Statement from ██████████ dated March 22, 2017
- M-5 Statement from ██████████ dated March 22, 2017
- M-6 SNAP Application dated January 8, 2015

- M-7 West Virginia Income Maintenance Manual §20.2
M-8 Advance Notice of Administrative Disqualification Hearing Waiver dated April 10, 2017 and Waiver of Administrative Disqualification Hearing signed April 15, 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 his SNAP benefits and requested that a SNAP penalty of twelve (12) months be imposed against him.
- 2) The Defendant was notified of the hearing by scheduling order sent by certified mail on April 20, 2017. The scheduling order was accepted and signed for on April 29, 2017, yet the Defendant failed to appear for the hearing or provide good cause for his failure to do so. In accordance to 7 CFR §273.16(e)(4) and West Virginia Department of Health and Human Resources' Common Chapters Manual, §740.20, the hearing was held without the Defendant in attendance.
- 3) [REDACTED] was disqualified as a SNAP vendor 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 EBT card (Exhibits M-2 and M-3).
- 4) [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 his SNAP benefits with the store, either purchasing non-food items or "running a tab" at the store, and paying this account off with his 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 Movant contended that the Defendant had transactions deemed excessively large for the limited quantities of eligible food items available for purchase at [REDACTED]. A review of the Defendant's EBT usage during the alleged period of trafficking documented that the Defendant's purchases at [REDACTED] were less than \$30. The Defendant had some purchases between \$50-\$100, however, taking into consideration that rural convenience stores typically have higher prices on items for sale is not suggestive of trafficking. Although same-day transactions occurred, these transactions did not appear to be indicative of paying off an account with the store, and did not otherwise indicate a 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) The burden of proof rested with the Movant to establish that the Defendant trafficked his SNAP benefits at [REDACTED], thereby committing an Intentional Program Violation.
- 2) Based on the information submitted, the Movant failed to establish through clear and convincing evidence that the Defendant trafficked his SNAP benefits.

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 21st day of June 2017

**Kristi Logan
State Hearing Officer**