



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 28, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-1692

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,

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

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

cc: April Stuckey, Repayment Investigator

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

██████████,

**Defendant,**

**v.**

**Action Number: 17-BOR-1692**

**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 22, 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 April Stuckey, Repayment Investigator. The Defendant did not appear. The Department's representative was sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- M-1 Code of Federal Regulations §273.16
- M-2 United States Department of Agriculture Food and Nutrition Services (USDA-FNS) investigation materials for ██████████, ██████████ WV, dated February 17, 2016
- M-3 USDA-FNS Declaration of Completeness of Record regarding investigation of ██████████, ██████████ WV, dated May 13, 2016
- M-4 USDA-FNS list of EBT excessively large purchases made at ██████████ from July 1 to December 26, 2015
- M-5 Electronic Benefits Transfer (EBT) Card Transaction History for Defendant, listing purchases made from May 9, 2015 to March 22, 2016
- M-6 Written statement signed by ██████████, dated March 22, 2017
- M-7 Written statement signed by ██████████, dated February 23, 2017

- M-8 USDA SNAP Retailer Locator, map of locations of SNAP retailers
- M-9 SNAP Mail-in Review form, signed and dated by Defendant on September 27, 2016
- M-10 West Virginia Income Maintenance Manual (WV IMM) Chapter 20, §20.2

**Defendant's Exhibits:**

None

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 Department's representative contended the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because she trafficked in 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).
- 3) [REDACTED] is a small convenience store, approximately 1,800 square feet in size, which sells ice, beer and soda, and a few incidental-need items like bread and milk. [REDACTED] sells fresh-food items such as fruits and vegetables in limited numbers and amounts.
- 4) From May 9, 2015 through March 22, 2016, the Defendant made 32 purchases at [REDACTED], spending \$739.29 in SNAP benefits (Exhibit M-5). The Department's representative stated that the USDA-FNS identified the Appellant's purchases made at the [REDACTED] as SNAP trafficking.
- 5) The Defendant did not appear at the hearing to refute the SNAP trafficking allegations.

**APPLICABLE POLICY**

WV IMM Chapter 9, §9.1.A.2.h reads, "Persons who have been found guilty of an Intentional Program Violation are disqualified [from receiving SNAP benefits] as follows: First Offense – one year; Second Offense – two years; Third Offense – permanent.

Pursuant to the Code of Federal Regulations 7 CFR §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 access device.

### 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 sells fresh-food items such as 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 as stated above, in that she was engaged in the trafficking of her SNAP benefits. The Defendant used her EBT card 32 times at ██████████ from May 9, 2015 through March 22, 2016, spending \$739.29 in SNAP benefits (Exhibit M-5). The Department's representative submitted into evidence a map of SNAP retailers near her home address (Exhibit M-8) indicating she drove 23 miles in one direction in order to purchase food from ██████████ when there were more than ten SNAP retailers within five miles of her home.

The Department's representative submitted into evidence two written statements signed by the owner of ██████████ and her husband. The statement from the husband, ██████████ (Exhibit M-6), reads as follows in part, "I allowed customers to purchase items on credit and pay at the end or the beginning of the month, when their benefits went on their EBT card. I did allow people to purchase cigarettes and other tobacco products with their EBT cards." The statement from the owner, ██████████ (Exhibit M-7), reads as follows in part, "I have owned ██████████ since 2011 . . . The biggest thing we did at ██████████ was let people run tabs and pay it off with their EBT cards. They were also allowed to buy cigarettes and tobacco with their EBT cards. High-dollar EBT transactions were people paying off their tabs."

Although the evidence against the Defendant is somewhat circumstantial, the sheer number of purchases she made at ██████████ which was nearly 25 miles from her home, are indicative of trafficking behavior. Also, the owner and his wife signed statements admitting they allowed customers to traffic in SNAP benefits. Finally, the Defendant did not appear at the hearing to refute the trafficking allegations. The Department has provided clear and convincing evidence that the Defendant trafficked in SNAP benefits 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 a small convenience store in ██████████ County, 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 by trafficking in SNAP benefits. She will be disqualified from participating in SNAP for one year, beginning August 1, 2017.

**ENTERED this 28<sup>th</sup> Day of June 2017.**

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**Stephen M. Baisden  
State Hearing Officer**