



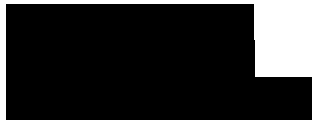
STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Jim Justice
Governor

BOARD OF REVIEW
416 Adams St.
Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326

Bill J. Crouch
Cabinet Secretary

August 3, 2017



RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-1990

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Deborah Cooper

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

████████████████████,

Defendant,

v.

ACTION NO.: 17-BOR-1990

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 a fair hearing for ██████████. 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. This fair hearing was convened on July 26, 2017, on an appeal filed June 15, 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 Deborah Cooper, Fraud Investigator. The Defendant failed to appear. Movant's representative was sworn and the following documents were admitted into evidence.

EXHIBITS

Movant's Exhibits:

- D-1 Administrative Disqualification Hearing (ADH) Summary
- D-2 United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) Letter of Charges, dated January 11, 2017; USDA-FNS Notice of Disqualifications, dated February 15, 2017; Printout of Electronic Benefit Transactions (EBT) history for ██████████; Declaration of Completeness of Record; Photographs of ██████████
- D-3 Code of Federal Regulations: 7 CFR §273.16

- D-4 Investigations and Fraud Management (IFM) Individual Suspect Investigation; Suspect appointment letter, dated May 19, 2017; West Virginia Intelligence Exchange (WVIX) report, dated May 19, 2017; Facebook pages; other database system reports
- D-5 IFM Statement of Advise and Consent dated June 1, 2017; Advanced Notice of ADH Waiver, dated May 24, 2017; Repayment Agreement, dated May 30, 2017
- D-6 WV EBT Transaction History for period August 13, 2014 through October 29, 2016
- D-7 Sworn statement from Defendant, dated June 1, 2017; Notation from Defendant's mother, [REDACTED]; Waiver of ADH hearing, dated June 1, 2017; eRapids documentation of Defendant education and skills
- D-8 Signed Rights and Responsibilities, dated October 3, 2016
- D-9 West Virginia Income Maintenance Manual (WVIMM) §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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Defendant was a recipient of SNAP benefits.
- 2) The Defendant had received SNAP benefits on and off as an adult since 2003; he had been receiving SNAP benefits consistently since at least October 9, 2012. (Exhibit D-1)
- 3) During a SNAP eligibility review on October 3, 2016, the Defendant signed SNAP Rights and Responsibilities acknowledging his understanding that to buy, sell, trade, steal, or otherwise use SNAP benefits for monetary gain or other considerations is considered SNAP trafficking, and that the penalty for doing so would result in disqualification from SNAP. (Exhibit D-8)
- 4) 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.
- 5) The Defendant was notified of the hearing by scheduling order mailed on June 21, 2017, by certified mail. The notice receipt was signed by [REDACTED], the Defendant's mother, with whom the Defendant is last known to have resided.

- 6) [REDACTED] was disqualified by the USDA-FNS division for trafficking SNAP benefits. The Defendant was implicated as allegedly trafficking his SNAP benefits with [REDACTED], based on repetitive and irregular pattern of purchases made with his EBT card. (Exhibit D-2)
- 7) [REDACTED] is a rural convenience store which carries a limited number of dairy items, breads, snacks, frozen foods, canned goods, and various sundries. USDA-FNS photographs documented moderate to sparsely stocked shelving, refrigeration, and freezer units. (Exhibit D-2)
- 8) The Movant alleged that the Defendant had several suspicious purchases that were made within hours to minutes of other purchases. (Exhibit D-1)
- 9) Back-to-back purchases occurred twice in July 2015, once in August 2015, twice in November 2015, once in March 2016, once in July 2016, and once in September 2016. (Exhibit D-1)
- 10) On October 5, 2016, at least two transactions occurred one (1) minute apart in the amounts of \$112.36 and \$54.00. (Exhibit D-1)
- 11) The Movant alleged that [REDACTED] was not large enough to comprise two separate purchases of large amounts of merchandise one minute apart on October 5, 2016.
- 12) On June 1, 2017, the Defendant signed a statement that the Defendant used his EBT card at [REDACTED] store and had knowledge that Mr. [REDACTED] would sell cigarettes, beer, and other items for payment with EBT cards. (Exhibit D-6)
- 13) The June 1, 2017, by signed statement, the Defendant indicated that Mr. [REDACTED] knew the Defendant's EBT number. (Exhibit D-6)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) §9.1 sets forth that:

Penalties for individuals found guilty of an IPV are as follows: First Offense, twelve (12) month disqualification.

WVIMM §20.2. C.2 provides that:

IPV's include: 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...

Code of Federal Regulations 7 CFR §273.16 provides that:

An Intentional Program Violation shall consist of 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.

WV Common Chapters, §740.22K explains that:

The Hearing Official shall base the determination of IPV on clear and convincing evidence that demonstrates that the Defendant committed, and intended to commit, an IPV... The Hearing Official shall render a decision after weighing the evidence and testimony presented at the hearing. In rendering a decision, the Hearing Official shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and controlling court orders.

DISCUSSION

In a separate investigation, the USDA found [REDACTED] was trafficking SNAP benefits and therefore, permanently disqualified it from participating as a SNAP retailer. In its investigation, the USDA identified the Defendant's EBT account as containing multiple purchases which were deemed to be suspect due to the consecutive nature of the purchases and on one occasion, the amount of the purchases relative to the size and inventory of [REDACTED]. The Movant investigated the Defendant and determined that the Defendant had participated in SNAP trafficking by using his EBT benefits at [REDACTED] in consecutive transactions on nine (9) separate dates from July 2015 to October 2016, including one occasion in which the Movant considered the purchase amounts excessive. The Movant requested disqualification of the Defendant from SNAP benefits for twelve (12) months.

The Movant had to prove by clear and convincing evidence that the Defendant intentionally committed an act that violated SNAP regulations related to the use of SNAP benefits. The Movant contended that consecutive transactions were suspicious, with the most suspicious transaction occurring October 5, 2016, due to the excessive amounts of the transactions. The Movant argued that [REDACTED] was not large enough to support two separate purchases of large amounts of merchandise one minute apart. Evidence presented by the Movant is not clear regarding volume or pricing of goods available at [REDACTED]. The content of photographs entered as evidence was not clear. The Movant alleged that the Defendant disclosed to the Movant that the store would take his EBT card into a back room and the Defendant would verbally give his Personal Identification Number (PIN) to [REDACTED] staff. The Movant further

alleged that the Defendant disclosed to the Movant that he had noticed a smaller balance on his card than there should have been. No evidence was presented to corroborate the Movant's testimony. The signed statement by the Defendant read that [REDACTED] staff had knowledge of the Defendant's EBT number; however, the signed statement does not contain any admission that the Defendant knowingly and intentionally provided [REDACTED] staff with his PIN.

After review of the evidence presented, the Movant did not establish by clear and convincing evidence that the Defendant intentionally committed a SNAP program violation by providing his PIN to [REDACTED] for the purpose of trafficking SNAP benefits. Although [REDACTED] was found to have conducted SNAP trafficking, evidence did not prove that the Defendant was assisting [REDACTED] in trafficking SNAP benefits.

CONCLUSIONS OF LAW

- 1) The Movant did not show by clear and convincing evidence that the Defendant participated in SNAP trafficking based on consecutive purchases from nine (9) separate dates at [REDACTED].
- 2) The Movant's finding that the Defendant received SNAP benefits to which he was not legally entitled due to intentionally violating a SNAP rule, is incorrect.

DECISION

It is the decision of the State Hearing Officer that the Defendant did **NOT** commit an Intentional Program Violation.

ENTERED this 3rd day of August 2017.

Tara B. Thompson
State Hearing Officer