



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

Jim Justice
Governor

BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661

Bill J. Crouch
Cabinet Secretary

September 5, 2017



RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-2006

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

cc: Ellis Bryson, Criminal Investigator

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

██████████,

Defendant,

v.

Action Number: 17-BOR-2006

**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 July 17, 2017. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WV DHHR) Common Chapters Manual and Federal Regulations at 7 CFR Section 273.16. The hearing was convened on August 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 Ellis Bryson, Criminal Investigator. The Defendant did not appear. The participants were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations 7 CFR Section 273.16
- M-2 United States Department of Agriculture Food and Nutrition Services (USDA-FNS) investigation materials and sanction determination for ██████████, ██████████ WV, dated April 15, 2016
- M-3 Electronic Benefits Transfer (EBT) Card Transaction History for Defendant, listing purchases made from February 4, 2015 through November 4, 2016
- M-4 Mail-in SNAP application/redetermination form, dated September 23, 2016
- M-5 West Virginia Income Maintenance Manual (WV IMM) Chapter 20, §20.2
- M-6 Copy of IG-IFM-ADH-waiver, Waiver of Administrative Disqualification Hearing form, and IG-IFM-ADH-Ltr, Notice of Intent to Disqualify form, sent to Defendant on October 31, 2016

M-7 General Store Information form from USDA, regarding general description and inventory of [REDACTED], WV

Defendant's Exhibits

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence during 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 her 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], from being a SNAP vendor because the business had trafficked in SNAP benefits (Exhibit M-2).
- 3) [REDACTED] is a small convenience store, approximately 1,150 square feet in size, which sells ice, beer and soda, and a few incidental-need items like bread and milk.
- 4) From February 4, 2015 through November 4, 2016, the Defendant made 21 purchases at [REDACTED] (Exhibit M-3). Among these purchases were four identified by the Department as being indicative of trafficking in that they were for more than \$50 per purchase. The total amount of these purchases was \$339.59.
- 5) The Department's representative argued that the store, [REDACTED], contained a limited stock of items, and the four large-amount purchases, three of which occurred within a five-day time span, identify the Appellant's spending pattern as indicative of SNAP trafficking.
- 6) The Defendant did not appear at the hearing to refute the SNAP trafficking allegations.

APPLICABLE POLICY

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

WV IMM Chapter 20.2.C.2 provides that once an IPV (Intentional Program Violation) is established, a disqualification penalty is imposed on the AG members who committed the IPV. The penalties are as follows: First Offense – one year disqualification; Second Offense – two year disqualification; Third Offense – permanent disqualification.

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 does sell fresh 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, in that she was engaged in the trafficking of her SNAP benefits. He testified that the Department considered purchases in the amount of \$50 or less to be possible valid purchases. He identified four purchases above this \$50 threshold. The first was made on March 24, 2015, in the amount of \$94.06. The second was made on March 27, 2015, in the amount of \$87.74. The third was made on March 29, 2015, in the amount of \$84.69. The fourth and final purchase identified by the Department as trafficking was made on May 10, 2015, in the amount of \$73.10 (Exhibit D-3).

The Department's representative stated that there were several other purchases which were close to the \$50 threshold, but the four listed above were the only ones identified by the Department as indicative of trafficking.

The Department's representative testified that ██████████ is a small rural convenience store which does not offer the for-sale inventory for large-amount purchases. He submitted into evidence a document included in the USDA investigation of the establishment that briefly catalogues the items for sale at the store (Exhibit D-7). The store did not sell fresh meats, only canned meats and packaged lunchmeat. The store only sold canned or frozen vegetables, and few dairy items.

The Defendant lives within the city limits of ██████████. Within two miles from ██████████ are three major supermarkets that sell a wide variety of fresh meats and vegetables in large amounts. ██████████ is five miles outside of ██████████ and provides a limited inventory.

The four large-amount purchases made from March 24 through May 10, 2015, for \$339.59 indicate trafficking behavior. The business, identified by the USDA as a participant in SNAP trafficking, does not have the inventory to warrant these three purchases made within five days for more than \$80 each. The Department has provided clear and convincing evidence that the Defendant engaged in SNAP trafficking at ██████████.

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 [REDACTED], 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. She will be disqualified from participating in SNAP for one year, beginning October 1, 2017.

ENTERED this 5th Day of September 2017.

Stephen M. Baisden
State Hearing Officer