



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

Bill J. Crouch  
Cabinet Secretary

Board of Review  
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Jolynn Marra  
Interim Inspector General

April 3, 2020



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 20-BOR-1013

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,

Tara B. Thompson  
State Hearing Officer  
Member, State Board of Review

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

cc: Addison Hamilton, Investigations and Fraud Management

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

██████████,

**Defendant,**

v.

**Action Number: 20-BOR-1013**

**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 January 3, 2020. 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 February 18, 2020.

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 should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Department appeared by Addison Hamilton, Investigations and Fraud Management. The Defendant failed to appear. The witness was sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- M-1 West Virginia Department of Corrections Inmate Search, printed July 11 and July 15, 2019; Arrest Mugshot Printout, printed July 10, 2019
- M-2 DHHR SNAP Review Form, submitted December 28, 2017
- M-3 DHHR inROADS Application for SNAP benefits, submitted June 23, 2018; SNAP 6 or 12 Month Contact Form, submitted November 28, 2018; DHHR inROADS SNAP Renewal, submitted May 29, 2019
- M-4 ebtEDGE Transaction Search for case number: 002437073; Individual Name Watch printout
- M-5 Handwritten signed statement, dated October 18, 2019

**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 Defendant was a recipient of SNAP benefits for a one-person Assistance Group (AG).
- 2) On December 28, 2017, the Defendant submitted a signed SNAP review form which indicated no additional household or AG members (Exhibit M-2).
- 3) The December 28, 2017 review form reflected that the Defendant's mailing address was [REDACTED] (Exhibit M-2).
- 4) On February 13, 2018, the Defendant was incarcerated at the [REDACTED] and was transferred to the [REDACTED] on May 22, 2019, with a projected release date of July 18, 2022 (Exhibits M-1 and M-5).
- 5) As of July 15, 2019, the Defendant's next scheduled parole hearing was to be held on July 18, 2019 (Exhibit M-1).
- 6) On June 23, 2018, an electronically signed SNAP renewal and Rights and Responsibilities agreement was submitted—which indicated no change of address and no additional household or AG members (Exhibit M-3).
- 7) On November 28, 2018, a SNAP 6 or 12-month contact form was submitted which did not indicate any additional household or AG members (Exhibit M-3).
- 8) The SNAP contact form was mailed to the Defendant at [REDACTED] (Exhibit M-3).
- 9) The signature of the November 28, 2018 SNAP contact form differed characteristically from the signature reflected on the December 28, 2017 SNAP review form.
- 10) The Defendant was incarcerated at the time the June 23 and November 28, 2018 SNAP renewals were signed and submitted (Exhibits M-1 and M-5).
- 11) On May 29, 2019, an inROADS electronic SNAP renewal was submitted which indicated no additional household or AG members (Exhibit M-3).
- 12) The Defendant was incarcerated at the time the May 29, 2019 SNAP renewal was submitted (Exhibits M-1 and M-5).
- 13) On October 18, 2019, the Movant obtained a handwritten sworn statement from the Defendant's mother, [REDACTED] (Ms. [REDACTED]) (Exhibit M-5).

- 14) The October 18, 2019 statement reflected that the Defendant was released from incarceration in “June or July 2019” (Exhibit M-5).
- 15) The October 18, 2019 statement reflected that while the Defendant was incarcerated, his mother received a SNAP contact form mailed to her home on behalf of the Defendant, denied completing the November 28, 2018 SNAP contact form, and indicated the Defendant’s spouse “may have signed the form” (Exhibit M-5).
- 16) The October 18, 2019 statement reflected that the Defendant’s EBT card was stolen while his mother was hospitalized from September 2018 to October 2018 (Exhibit M-5).
- 17) The Defendant’s mother claimed that her niece, [REDACTED], called and reported the Defendant’s card as stolen and took action “online to help get [the Defendant’s] benefits continued” (Exhibit M-5).
- 18) The Defendant’s mother claimed that the Defendant gave her the EBT card pin by telephone (Exhibit M-5).
- 19) The Defendant’s mother admitted to using the Defendant’s EBT card to purchase food for the Defendant’s child “after September 2018 until July 2019,” when she gave the Defendant his EBT card (Exhibit M-5).

### **APPLICABLE POLICY**

#### **Code of Federal Regulations 7 CFR §271.2 provides in part:**

*Trafficking* means attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via EBT cards for cash or consideration other than eligible food, either directly, indirectly, in complicity, or in collusion with others, or acting alone.

#### **Code of Federal Regulations 7CFR §273.16(a)(1) provides in part:**

Administrative disqualification procedures should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation as defined in paragraph (c) of this section.

#### **Code of Federal Regulations 7 CFR §273.16(b)(1)(i) provides in part:**

Individuals found to have committed an intentional Program violation through an administrative disqualification hearing ... shall be ineligible to participate in the Supplemental Nutrition Assistance Program (SNAP) for a period of twelve months for the first intentional Program violation.

**Code of Federal Regulations 7 CFR §273.16(b)(13) provides in part:**

The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification. The disqualification period must continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household.

**Code of Federal Regulations 7CFR §273.16(c) provides in part:**

An Intentional Program Violation (IPV) consists of having intentionally committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards.

**Code of Federal Regulations 7CFR §273.16(e)(4) provides in part:**

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence.

**DISCUSSION**

The Movant petitioned the Board of Review for an Administrative Disqualification Hearing (ADH) and requested the Defendant be disqualified from SNAP benefits for a 12-month penalty period and an Intentional Program Violation (IPV) be established. In defense of their request, the Movant argued that the Defendant trafficked his SNAP benefits by transferring his EBT card to an individual who was not included in his SNAP assistance group. The Defendant was notified of the ADH scheduling and failed to appear. Pursuant to federal regulations, the hearing was held in the Defendant's absence.

Federal regulations provide that the Defendant's SNAP benefits may only be used by the Defendant and his household, or a person the household selects, to purchase food for the household. The Movant had to prove by clear and convincing evidence that the Defendant affected an exchange of SNAP benefits issued and accessed via EBT card for consideration other than eligible food, either directly, indirectly, in complicity, or collusion with others. The Defendant did not appear to refute the Movant's evidence.

The evidence established that the Defendant was the only member of his assistance group and had no authorized representatives. No evidence was entered to dispute that the signature on the December 28, 2017 SNAP review form was the Defendant's signature. The SNAP review form indicated that the Defendant's mailing address before his February 13, 2018 incarceration was [REDACTED]. No evidence was entered to verify that the Defendant had reported a change of address to the Movant before his February 2018 incarceration.

The Rights and Responsibilities attached to the December 28, 2017 SNAP Review Form were unsigned. The evidence failed to demonstrate that the Defendant signed the Rights and Responsibilities accompanying the December 28, 2018 SNAP Review Form which would have indicated that he understood that SNAP benefits were to be used by himself to purchase food or seeds and that he could not buy, sell, trade, steal, or otherwise use SNAP benefits for monetary gain or other considerations.

The Movant's evidence reflected that the Defendant was incarcerated on February 13, 2018. Although the Movant's evidence reflected a mugshot of the Defendant from an unverified public source, the handwritten written statement by the Defendant's mother corroborated that the Defendant was incarcerated in the [REDACTED] in February 2018 (Exhibit M-5). The Movant's evidence reflected a handwritten notation by an unidentified person that the Defendant was never released from incarceration but was transferred to [REDACTED] —current as of an unspecified date. Although the information provided by the handwritten notation is not clear and convincing evidence, the West Virginia Department of Corrections Offender Search and the handwritten statement by the Defendant's mother corroborated that the Defendant remained incarcerated while being transferred to [REDACTED] on May 22, 2019 (Exhibits M-1 and M-5).

During the hearing, the Movant testified that the reviews were completed while the Defendant was incarcerated and that the Defendant could not have given consent or completed the SNAP reviews himself. The Movant proved by clear and convincing evidence that on June 23 and November 28, 2018, and on May 29, 2019 SNAP renewals were completed and submitted on the Defendant's behalf while he was incarcerated. The Movant failed to prove by clear and convincing evidence that the Defendant intentionally provided his mother with his EBT card and PIN or that transactions were made with his EBT card following his February 2018 incarceration. No evidence was entered to establish that the Defendant directed, had knowledge of, or conspired with others to have his reviews completed while he was incarcerated. The Movant failed to prove by clear and convincing evidence that the Defendant intentionally acted to affect an exchange of SNAP benefits in collusion with his spouse, his mother, or his mother's niece.

Although the Defendant's mother's sworn statement alleged that the Defendant gave her his EBT card PIN, this information was provided following claims asserting that her niece and the Defendant's spouse conspired and took action to continue the Defendant's SNAP benefits during his incarceration. The Defendant's mother did not indicate when the Defendant provided her with his EBT PIN. The Defendant's mother admitted to using the Defendant's SNAP benefits during the period between October 2018 and July 2019. No evidence was entered to verify that the Defendant provided his PIN to his mother following his February 2018 incarceration and effected an exchange of SNAP benefit transactions with his EBT card from February 2018 through the completion of the June 23, 2018 SNAP renewal submitted on his behalf. The evidence was clear that beginning with the June 23, 2018 SNAP renewal, parties other than the Defendant effectuated a continuation of the Defendant's SNAP benefits; however, no evidence was entered to verify that the Defendant had knowledge that others had conspired to maintain his SNAP benefits following his February 2018 incarceration.

The ebtEDGE Transaction Search —printed January 9, 2020— provided a case number and card number, but no evidence was entered to verify that the card and case number indicated were

assigned to the Defendant. Amidst the copies of transactions was an Individual Name Match printout reflecting identifying information for individuals with the last name of [REDACTED]. Identifying information such as the social security numbers, dates of birth, and case numbers for these individuals were included on this January 9, 2020 printout. Although the case numbers on the Individual Name Watch printout did not match the case number on the ebtEDGE Transaction Search, this Hearing Officer was unable to determine that the case number on the ebtEDGE printout was the Defendant's case and reflected the Defendant's transactions. Therefore, the body of evidence contained in Exhibit M-4 was found to be unreliable.

### **CONCLUSIONS OF LAW**

- 1) The Movant's evidence failed to prove that the Defendant intentionally affected an exchange of SNAP benefits issued and accessed via EBT card for consideration other than eligible food, either directly, indirectly, in complicity, or in collusion with others.
- 2) The Defendant did not commit an Intentional Program Violation.
- 3) A first offense 12-month SNAP disqualification penalty will not be imposed.

### **DECISION**

It is the finding of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation.

**ENTERED this 3<sup>rd</sup> day of April 2020.**

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**Tara B. Thompson**  
**State Hearing Officer**