



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

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Jolynn Marra
Interim Inspector General

February 4, 2020



RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-2690

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Allison Napier, Department Representative

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

██████████,

Defendant,

v.

Action Number: 19-BOR-2690

**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 November 6, 2019. 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 December 10, 2019.

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

At the hearing, the Movant appeared by Allison Napier. Appearing as witnesses for the Movant were Seana Harrison and ██████████. The Defendant appeared *pro se*. Appearing as a witness for the Defendant was ██████████. The witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- D-1 Code of Federal Regulations
 7 CFR §273.16

- D-2 Written statement by ██████████, dated June 3, 2019
 Copy of EBT card and receipt

- D-3 EBT card transaction records for the Defendant

- D-4 SNAP review documents for Defendant, signed March 20, 2019
Case Benefit Summary (data system screen print) for the Defendant's case
- D-5 Client Contact Report (data system screen print), documenting a June 3, 2019
contact with the Defendant
- D-6 Written statement by the Defendant, dated September 4, 2019
- D-7 Code of Federal Regulations
7 CFR §271.2
- D-8 West Virginia Income Maintenance Manual (WVIMM)
Chapter 11, §11.2
- D-9 WVIMM
Chapter 11, §11.6
- D-10 Electronic Disqualified Recipient System (eDRS)
Screen print of query results for the Defendant

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) In June 2019, [REDACTED] returned an Electronic Benefits Transfer (EBT) card to the Movant. (Exhibit D-2)
- 2) The Movant determined the returned card belonged to the case of the Defendant, for access to her SNAP benefits.
- 3) The Movant initiated an investigation of the Defendant, including taking a statement from Mr. [REDACTED] (Exhibit D-2), a review of the Defendant's EBT transaction history (Exhibit D-3), and taking a statement from the Defendant (Exhibit D-6).
- 4) The Defendant admitted allowing four individuals – her "...neighbor [REDACTED]... [REDACTED] [REDACTED]... [REDACTED]..." – use her EBT card and access her SNAP benefits in her written statement to the Movant (Exhibit D-6).
- 5) These four individuals are not listed as in the Defendant's household on the SNAP review (Exhibit D-4) signed by the Defendant on March 20, 2019.
- 6) On her March 20, 2019 SNAP review (Exhibit D-4), the Defendant signed the review document, affirming a series of statements which included the statement, "I understand

that SNAP benefits are to be used by or behalf of my assistance group and me to purchase food or seeds. I cannot sell my SNAP benefits or use someone else's benefits for myself. The SNAP benefits will not be used for any other purpose.”

- 7) The Defendant did not specify an authorized representative for her SNAP benefits on her March 20, 2019 SNAP review document (Exhibit D-4).
- 8) The Movant contended the actions of the Defendant constitute an Intentional Program Violation (IPV) and requested this hearing for the purpose of making that determination.
- 9) The Defendant has no prior IPV offenses (Exhibit D-10).

APPLICABLE POLICY

The Code of Federal Regulations, 7 CFR §273.16(c) defines an IPV as having intentionally “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).”

The West Virginia Income Maintenance Manual (WVIMM), addresses the SNAP benefit at §1.4.19, and reads, “USDA is responsible for authorizing business establishments to accept SNAP benefits. SNAP benefits may be used to **purchase food for home preparation and/or seeds and plants which produce food for home consumption**. SNAP benefits cannot be used to buy hot foods that are ready to eat or foods that may be eaten in the store. SNAP benefits are deposited into an Electronic Benefit Transfer (EBT) account and accessed by using an EBT card. **This is the SNAP identification card for the AG** [assistance group].” (emphasis added)

The WVIMM, at §3.2.1.B.5, indicates a first offense IPV results in a one-year disqualification from SNAP.

DISCUSSION

The Movant requested this hearing to determine if the Defendant committed an Intentional Program Violation (IPV) of SNAP. To show the Defendant committed an IPV, the Movant must provide clear and convincing evidence that the Defendant intentionally committed an act that constitutes a violation of governing regulations regarding the use, presentation and transfer of the EBT card used to access SNAP benefits.

The Movant presented testimony and evidence that described unusual activity in the Defendant's SNAP benefits. [REDACTED] was in possession of the Defendant's EBT card and returned it to a DHHR county office. An investigator for the Movant took a statement from Mr. [REDACTED] (Exhibit D-2) and the Movant initiated an investigation of the Defendant's case. EBT transaction records (Exhibit D-3) regarding the Defendant's SNAP use show she purchased \$734 in groceries in one day. A social services worker from the Movant recorded a contact with the

Defendant at the Defendant's home (Exhibit D-5). This contact recording (Exhibit D-5), made one day after the \$734 purchase was documented in the Defendant's EBT transaction history, includes the worker's opinion that "...there is not enough food present to show [Defendant] has spent that money on food." This information shows unusual activity but does not show an IPV.

Testimony from Mr. [REDACTED] was unconvincing regarding any specific transaction he personally witnessed that constituted a SNAP violation. Testimony from the Defendant contended Mr. [REDACTED] made his claims in conjunction with a threat against the Defendant, and this testimony was at least as convincing as Mr. [REDACTED]. The written statement (Exhibit D-2) from Mr. [REDACTED] is unclear because it alternates between first-person statements and third-person statements that appear to have been written by the Movant for Mr. [REDACTED]. In this statement (Exhibit D-2), Mr. [REDACTED] claims to understand how the Defendant misuses her SNAP benefits but doesn't describe it as something he witnessed – other than a reference to an audio recording that was not offered as evidence in the hearing. The information described here could meet the IPV definition but was inconclusive based on the unreliability of the witnesses.

However, the Defendant admitted to SNAP misuse in her testimony and in her own written statement to the Movant (Exhibit D-6). The Defendant listed four individuals not included in her household for SNAP purposes who were allowed to use her EBT card to access her SNAP benefits. The Defendant did not specify these individuals, or anyone else, to act as authorized representative for that purpose. The Defendant signed a document affirming her understanding that SNAP benefits were to be used by her household members for her household. The Defendant committed an IPV of SNAP by transferring her EBT card/access device to four different individuals outside of her SNAP assistance group and allowing those individuals to use this access device to misrepresent themselves as a member of the Defendant's SNAP assistance group or as an authorized representative for the Defendant's household.

The Movant has proven by clear and convincing evidence that the Defendant committed an IPV. As the Defendant has no prior IPV disqualifications, the Movant is correct to disqualify the Defendant from SNAP participation for one year.

CONCLUSIONS OF LAW

- 1) Because the SNAP access device – or EBT card – is a form of identification for members of the SNAP assistance group, its appropriate use and presentation is limited to the SNAP assistance group members or their authorized representative.
- 2) Because the Defendant transferred her card to four separate individuals not in her home or otherwise authorized to use or present her EBT card, she has violated the regulations governing the use, presentation and transfer of her SNAP benefits.
- 3) Because the violation of SNAP regulations by the Defendant constitutes an IPV, the Movant must disqualify the Defendant from receipt of SNAP benefits.
- 4) Because the IPV is the Defendant's first offense, the disqualification period is one year.

DECISION

It is the finding of the State Hearing Officer that the Defendant committed an Intentional Program Violation (IPV). The Defendant will be disqualified from receipt of SNAP benefits for a period of one year, beginning March 1, 2020.

ENTERED this ____ Day of February 2020.

**Todd Thornton
State Hearing Officer**