



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

**Bill J. Crouch**  
Cabinet Secretary

**Board of Review  
416 Adams Street Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 79326**

**Jolynn Marra**  
Interim Inspector General

January 7, 2020



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 19-BOR-2693

Dear Ms. Posey:

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

cc: Debra Carey, Investigations and Fraud Management

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

██████████,

**Defendant,**

v.

**Action Number: 19-BOR-2693**

**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 7, 2019. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual and Federal Regulations at 7 CFR § 273.16. The hearing was convened on December 12, 2019.

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

At the hearing, the Department appeared by Debra Carey (Ms. Carey), Investigations and Fraud Management. The Defendant failed to appear for the hearing. Ms. Carey was sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- M-1 ADH Hearing Summary
- M-2 ebtData Warehouse Client Transaction Search Results, dated June 1, 2019 through August 15, 2019
- M-3 Transaction Detail, dated June 11, 2019, and Surveillance Photographs, undated
- M-4 Transaction Detail, dated June 12, 2019, and Surveillance Photographs, undated
- M-5 Transaction Detail, dated July 9, 2019, and Surveillance Photographs, dated July 9, 2019
- M-6 Benefit Recovery Referral, dated September 16, 2019
- M-7 Case Members History, dated September 16, 2019
- M-8 eRAPIDS Payee/Representative/Additional Cardholder Information printout
- M-9 eRAPIDS Payee/Representative printout
- M-10 DHHR SNAP Review, received October 2, 2017
- M-11 DHHR Combined Application and Review Form, signed June 10, 2019
- M-12 DHHR Letter, dated September 16, 2019

- M-13 Advanced Notice of ADH Waiver, dated October 15, 2019
- M-14 Waiver of ADH, unsigned
- M-15 West Virginia Income Maintenance Manual (WVIMM) §§ 11.2-11.2.5.C.2
- M-16 Electronic Code of Federal Regulations, current as of April 13, 2016
- M-17 Food Stamp Claim Determination

**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 Supplemental Nutrition Assistance Program (SNAP) benefits during the period of June 7, 2019 through August 8, 2019 (Exhibit M-2).
- 2) As of September 16, 2019, the Defendant was the only active member of her Assistance Group (AG) (Exhibits M-7 and M-11).
- 3) As of November 6, 2019, no authorized representatives or additional card holders had been permitted to access the Defendant's SNAP benefits (Exhibits M-8 and M-9).
- 4) On September 16, 2019, the Movant received a Benefit Recovery Referral for the period of June 1, 2019 through July 31, 2019 due to multiple Electronic Benefit Transfer (EBT) card replacements (Exhibit M-6).
- 5) On October 15, 2019, the Movant issued an Advanced Notice of Administrative Disqualification Hearing (ADH) Waiver advising the Defendant that the Movant had conducted an investigation and determined that the Defendant had committed a SNAP Intentional Program Violation (IPV) by "allowing access to her EBT account by persons who were not members of her assistance group and not an authorized representative" (Exhibit M-13).
- 6) On November 7, 2019, the Movant requested an ADH to establish that the Defendant had committed an Intentional Program Violation (IPV) by trafficking her SNAP benefits and requested that a twelve-month disqualification penalty be imposed against the Defendant.
- 7) On October 2, 2017 and June 10, 2019, the Defendant signed Rights and Responsibilities indicating that she understood that SNAP benefits were to be used by herself to purchase food for her AG (Exhibits M-10 and M-11).

- 8) The Defendant's EBT card was used by a person other than the Defendant to complete SNAP benefit transactions on June 11 and 12, 2019, at the [REDACTED] in the respective amounts of \$85.86 and \$39.09 (Exhibits M-2 through M-4).
- 9) The Defendant's EBT card was used by a person other than the Defendant to complete a SNAP benefit transaction on July 9, 2019, at [REDACTED], in the amount of \$16.98 (Exhibits M-2 and M-5).
- 10) The Defendant had no previous history of established IPV.

### **APPLICABLE POLICY**

**West Virginia Income Maintenance Manual (WVIMM) §§ 1.4.19.C – 1.4.19.C.2 provides in part:**

SNAP benefits are deposited into an EBT account and accessed by using the EBT card and a Personal Identification Number (PIN). An authorized cardholder is an individual, who in addition to the payee, may be issued an EBT card and access to the EBT account. The authorized cardholder has his own card and PIN and access to the EBT account.

**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 her SNAP benefits by transferring her EBT card and PIN to an unauthorized individual not included in her 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.

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 in collusion with others. The Defendant did not appear at the hearing to refute the Movant's evidence. No evidence was entered to demonstrate that the person who completed the June 11, 12, and July 9, 2019 EBT transactions was an authorized EBT cardholder for the Defendant.

Federal regulations provide that the Defendant's SNAP benefits may only be used by the Defendant and her household, or a person the household selects as an authorized representative, to purchase food for the household. The evidence verified that the Defendant had acknowledged — by signature— her understanding that SNAP benefits could only be used on behalf of her AG. The evidence reflected that the Defendant was the only member of her AG and the only person

authorized to access her SNAP benefits via EBT, therefore, the Defendant's EBT PIN would have been known only to her. As EBT transactions were conducted by a non-AG member using the Defendant's PIN, the evidence clearly and convincingly demonstrated that the Defendant affected an exchange of SNAP benefits issued and accessed via EBT for food purchased by persons other than herself, which violated SNAP rules.

### **CONCLUSIONS OF LAW**

- 1) Federal regulations prohibit a recipient from allowing a person who is not a member of the household to access SNAP benefits via an EBT card that was not intended for the household.
- 2) The Defendant is the only member of her household and does not have an authorized EBT representative or additional card holder.
- 3) The Defendant intentionally violated SNAP rules by permitting another person to access her SNAP benefits using her EBT card.
- 4) The Defendant had no previous history of IPV penalty; therefore, a first offense 12-month disqualification penalty period should be imposed.

### **DECISION**

It is the finding of the State Hearing Officer that the Defendant committed an Intentional Program Violation. The Defendant will be disqualified from participation in the Supplemental Nutrition Assistance Program for twelve (12) months, effective February 1, 2020.

**ENTERED this 7<sup>th</sup> day of January 2020.**

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**Tara B. Thompson  
State Hearing Officer**