



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

January 26, 2021



RE: [REDACTED] v. WVDHHR
ACTION NO.: 20-BOR-2448

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

cc: Debra Carey, WVDHHR

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

██████████,

Defendant,

v.

Action Number: 20-BOR-2448

**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 September 17, 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 Section 273.16. The hearing was convened on December 1, 2020. The Defendant failed to attend the hearing, but subsequently established good cause for failing to appear. The hearing was rescheduled for January 20, 2021, and notice was sent to the Defendant on or about December 17, 2020, via First Class U.S. Mail (as the Defendant continued to be an active recipient of Department benefits). The Defendant again failed to appear. As a result of the Defendant's failure to appear on January 20, 2021, the hearing decision is based on information and testimony presented during the December 1, 2020 hearing.

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

At the hearing, the Movant appeared by Debra Carey, Repayment Investigator, WVDHHR. The Defendant failed to appear.

The witness was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- | | |
|-----|--|
| M-1 | ADH Hearing Summary |
| M-2 | Benefit Recovery Referrals |
| M-3 | SSA Prisoner Match Information |
| M-4 | EBT Data Warehouse transaction information |
| M-5 | FIS EBT Edge Agency card information |
| M-6 | Individual Demographics information |
| M-7 | Payee/Representative information |

M-8	SNAP redetermination form signed on April 24, 2019
M-9	Food Stamp Claim Determination forms
M-10	Food Stamp Allotment Determination form
M-11	Advance Notice of Administrative Disqualification Hearing Waiver dated October 2, 2020
M-12	Waiver of Administrative Disqualification Hearing form
M-13	West Virginia Income Maintenance Manual Chapter 1.3.1.A.3
M-14	West Virginia Income Maintenance Manual Chapters 11.2, 11.2.2., 11.2.3 and 11.2.3.B
M-15	Code of Federal Regulations Section 273.16
M-16	Copy of Repayment Investigator's notes from telephone call with [REDACTED] County Sheriff's Deputy [REDACTED]
M-17	Case Comments for the period of May 10, 2019 to September 4, 2020

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) A request for an Administrative Disqualification Hearing was received by the Board of Review from the West Virginia Department of Health and Human Resources, hereinafter referred to as Movant, on September 17, 2020.
- 2) The Movant contends that the Defendant has committed an Intentional Program Violation (IPV) and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, for a period of 12 months.
- 3) Notification of the December 1, 2020 hearing was mailed to the Defendant via First Class U.S. Mail on or about October 28, 2020, as the Defendant is an active recipient of Department benefits.
- 4) The hearing convened as scheduled at 10 a.m. on December 1, 2020, and as of 10:15 a.m., the Defendant failed to call in for the telephone hearing. As set forth in the Code of Federal Regulations found at §7 CFR 273.16 (e) (4), and the West Virginia Department of Health and Human Resources Common Chapters Manual Chapter 740.20, the hearing was conducted without the Defendant in attendance.
- 5) On December 14, 2020, the Defendant established good cause for failure to appear at the December 1, 2020 hearing. In accordance with Federal Regulations, good cause was granted, and the matter was rescheduled for January 20, 2021. The Defendant failed to appear for the rescheduled hearing.

- 6) The Movant's Investigations and Fraud Management (IFM) Unit received referrals on May 20, 2020 (M-2), indicating that an unknown individual had utilized the Defendant's Electronic Benefits Transfer (EBT) card to make purchases in August 2019, September 2019, November 2019, December 2019, January 2020, and February 2020 during time periods in which the Defendant was incarcerated (M-3).
- 7) The Defendant is the only person in his SNAP assistance group, and no one else was authorized to use his EBT card (M-6 and M-7).
- 8) The Defendant submitted a SNAP redetermination on April 24, 2019 (M-8), which included statements indicating that he understood SNAP benefits were to be used by him or on behalf of his assistance group to purchase food or seeds.
- 9) The Defendant was incarcerated at [REDACTED] from July 23, 2019 through September 20, 2019. Evidence shows a subsequent incarceration from October 28, 2019 through February 24, 2020 (M-3).
- 10) In October 2020, the Defendant informed Repayment Investigator Debra Carey that his wallet was stolen from a drawer in his household because the door of his residence was left unlocked at the time of his arrest. He stated that his PIN was written on a slip of paper in his wallet (M-1).
- 11) The Repayment Investigator interviewed [REDACTED] County Sheriff's Department Chief Deputy [REDACTED] on October 15, 2020. The deputy stated that he did not specifically remember arresting the Defendant, but normally locks the door to an arrestee's residence when he takes a person into custody unless the individual asks him to leave the door unlocked. He also indicated that individuals who are arrested normally take their wallets with them because they must verify their identity at the prison (M-16).
- 12) The Defendant contacted the Department on March 6, 2020 to report that his EBT card had been lost and to order a replacement card (M-17).
- 13) Unauthorized use of the Defendant's EBT card resulted in an overpayment of SNAP benefits for the period of August 2019-September 2019 and November 2019-February 2020 (M-9).

APPLICABLE POLICY

Code of Federal Regulations Section 273.16.c.1 (M-15) states that an Intentional Program Violation includes committing an 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 as part of an automated benefit delivery system (access device).

West Virginia Income Maintenance Manual §11.2.3.B (M-14) states that IPVs include making false or misleading statements, misrepresenting facts, concealing or withholding information, and 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. The client(s) who is found to have committed an IPV is ineligible to participate in the program for a specified time, depending on the number of offenses committed.

West Virginia Income Maintenance Manual §3.2.1.B.5 states that persons who have been found guilty of an IPV are disqualified as follows: First offense, one-year disqualification; second offense, two-year disqualification; and third offense, permanent disqualification.

DISCUSSION

Regulations specify that an Intentional Program Violation includes committing an 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 as part of an automated benefit delivery system (access device). An individual found to have committed an IPV is ineligible to receive SNAP benefits for a specified time, depending on the number of offenses committed.

Evidence reveals that an unknown individual, who was not in the Defendant's SNAP assistance group or authorized to use his EBT card, made purchases with the card on several occasions while the Defendant was incarcerated.

However, there is no evidence that the Defendant permitted an unauthorized individual to utilize his EBT card during that time. The Defendant informed the Repayment Investigator that his card was stolen during his incarceration and that someone was able to use the card because his PIN was written on a slip of paper inside his wallet. While Deputy [REDACTED] was able to provide information on his usual arrest practices, he did not specifically remember arresting the Defendant. Therefore, the information he provided can be given little weight. In addition, the Defendant requested a replacement EBT card on March 3, 2020, shortly after he was released from prison.

As there is no clear and convincing evidence that the Defendant permitted an unauthorized user to make purchases with his EBT card while he was incarcerated, the Movant's proposal to apply an Intentional Program Violation penalty to his SNAP benefits is incorrect.

CONCLUSIONS OF LAW

- 1) An Intentional Program Violation can be established when a recipient violates 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 as part of an automated benefit delivery system (access device).

- 2) An unauthorized user made purchases using the Defendant's EBT card and PIN during the time he was incarcerated.
- 3) There is no clear and convincing evidence that the Defendant permitted the unauthorized person to utilize his EBT card.
- 4) The Movant's proposal to apply an IPV penalty to the Defendant's SNAP benefits cannot be affirmed.

DECISION

The Movant's proposal to apply an IPV penalty to the Defendant's SNAP benefits is **REVERSED**.

ENTERED this 26th Day of January 2021.

**Pamela L. Hinzman
State Hearing Officer**