



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 E. Third Avenue
Williamson, WV 25661**

**Earl Ray Tomblin
Governor**

**Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary**

November 28, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing held on November 21, 2011 for the purpose of determining whether an Intentional Program Violation (IPV) was committed by you.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and 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.

An Intentional Program Violation consists of intentionally having made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of the Food Stamp Act, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. [WV Income Maintenance Manual Section 20.2,C,2 and 7 CFR Section 273.16 (c)]

Information submitted at the hearing reveals that you intentionally participated in SNAP benefit trafficking by selling your SNAP Electronic Benefits Transfer (EBT) card.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. Your disqualification from SNAP will begin effective January 1, 2012.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 11-BOR-1715

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Movant.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing concluded on November 28, 2011 for ----- . This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. The hearing was convened via videoconference on November 21, 2011, with Department's Representative at the [REDACTED] County office of the WV DHHR in [REDACTED] WV, and the Hearings Examiner at the [REDACTED] County office of the WV DHHR in [REDACTED] WV.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (SNAP) is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Brian Shreve, Repayment Investigator.

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

The Hearing officer placed participant under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in SNAP.

V. APPLICABLE POLICY:

7 CFR §273.16 Code of Federal Regulations
Common Chapters Manual, Chapter 700
West Virginia Income Maintenance Manual: Chapter 1.2.E, Chapter 20.2 and 20.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- M-1 Copy of the Code of Federal Regulations (CFR) §273.16 showing disqualifications for Intentional Program Violations.
- M-2 Written statement from individual claiming he bought an EBT card from Defendant.
- M-3 Copy of receipt from WV DHHR, [REDACTED] County Office, indicating an EBT card belonging to Defendant was returned to the local office on July 28, 2011.
- M-4 Copy of EBT card returned to WV DHHR, [REDACTED] County Office.
- M-5 Copy of Combined Application Form and Rights and Responsibilities Form dated and signed by Defendant on March 1, 2011.
- M-6 Copy of IFM-BR-44 Waiver of Administrative Disqualification Hearing form and IFM-BR-44a Notice of Intent to Disqualify form, sent to Defendant on May 23, 2011.

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of Intentional Program Violation, or IPV, in the Defendant's SNAP case because she allegedly sold her SNAP benefits by giving her Electronic Benefits Transfer (EBT) card to an individual in return for money.
- 2) Defendant was mailed notice of the Administrative Disqualification Hearing on November 8, 2011, by first class mail. The notice was sent to -----, -----. This is the address at which Defendant receives her public assistance benefits.
- 3) The hearing was scheduled for 11:00 a.m. on November 21, 2011, and as of 11:15 a.m., the Defendant failed to appear. As set forth in regulations (7 CFR §273.16(e) (4)), and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, 740.20), the hearing convened at 11:15 a.m., and was conducted without the Defendant in attendance.

- 4) On July 27, 2011, an individual came to the WV Department of Health and Human Resources, [REDACTED] County Office in [REDACTED] WV, and signed a statement indicating he had purchased Defendant's EBT card from her for \$50. (Exhibit M-2.) Clerical staff at the [REDACTED] County office took possession of the card (Exhibit M-4) and gave him a written receipt for it. (Exhibit M-3.) The name imprinted on the card was that of the Defendant.
- 5) Department's representative, the Repayment Investigator who conducted the investigation into Defendant's SNAP case, argued Defendant was aware that selling her SNAP benefits was a violation of WV DHHR rules and policy. He submitted into evidence a copy of the DFA-RFA-1, Common Application Form (CAF) and DFA-RR-1, Rights and Responsibilities form which Defendant signed on March 1, 2011, for her most recent SNAP benefits review. (Exhibit M-5.) The DFA-RR-1, Rights and Responsibilities form is a list of applicants' rights and responsibilities for each program for which an applicant applies. The applicant signifies that he or she is aware of each right or responsibility by checking "Yes" or "No" at each item. Under the SNAP Program section of the form, item #1 states,

I understand that SNAP benefits are to be used by my family 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 . . .

Also under the SNAP Program section of the form, item #4 states,

I understand if I am found (by court action or administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive SNAP benefits as follows: First Offense – one year; Second Offense – two years; Third Offense – permanently. In addition, I will have to repay any benefits received for which I was not eligible.

Defendant has marked "Yes" at both of these items.

- 6) The Code of Federal Regulations, 7 CFR §273.16(c) (Exhibit M-1), defines an Intentional Program Violation (IPV) as:
 - (c) Definition of intentional Program violation. Intentional Program violations shall consist of 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 [SNAP] 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).

VIII. CONCLUSIONS OF LAW:

The Department has established that the Defendant willfully or intentionally sold her SNAP benefits to another person. She signed a Rights and Responsibilities form indicating that she knew this was a violation of WV DHHR rules and regulations, and the form clearly stated the penalties for this violation.

IX. DECISION:

Selling a person's SNAP benefits is a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Agency's proposal to apply a SNAP disqualification is **upheld**. The Defendant will be disqualified from participation in SNAP for a period of twelve (12) months effective January 1, 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of November, 2011.

**Stephen M. Baisden
State Hearing Officer**