



**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**

February 14, 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 December 17, 2010 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 having intentionally 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 sold benefits from your Electronic Benefits Transfer (EBT) card in order to receive cash value for your SNAP benefits.

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, 2011.

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**

-----,

Defendant,

v.

Action Number: 10-BOR-2174

**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 February 14, 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 on December 17, 2010.

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 Examiner 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, Chapter 20.2; Chapter 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 BVRF Screen print from RAPIDS System showing referral for recoupment dated August 25, 2010.
- M-3 ES-FS-5, SNAP Claim Determination sheet.
- M-4 E-mail from [REDACTED] County Economic Service Worker indicating a SNAP recipient had paid \$100 toward a \$200 food purchase allegedly made with Defendant's EBT card.
- M-5 EBT Administration System transaction history for -----of [REDACTED] WV.
- M-6 Written Statement from an EBT card-holder, dated August 27, 2010.
- M-7 Common Application Form (CAF) from RAPIDS System and Rights and Responsibilities Form (DFA-RR-1), both signed and dated by Defendant on May 25, 2010.
- M-8 CMCC Screen Print from RAPIDS System showing case comments made on May 25, 2010.
- M-9 Common Application Form (CAF) from RAPIDS System and Rights and Responsibilities Form (DFA-RR-1), both signed and dated by Defendant on March 5, 2010.
- M-10 CMCC Screen Print from RAPIDS System showing case comments made on March 5, 2010.
- M-11 Copy of appointment letter for pre-hearing conference on September 3, 2010, sent to Defendant on August 30, 2010.
- M-12 Copy of IG-BR-44a Notice of Intent to Disqualify form, and IG-BR-44b, Waiver of Administrative Disqualification Hearing for Trafficking Cases, sent to Defendant on September 28, 2010.

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of Intentional Program Violation, or IPV, in the Defendant's SNAP case because he allegedly sold \$200 in SNAP benefits from his Electronic Benefits Transfer Card for \$60 to another SNAP recipient.
- 2) Defendant was mailed notice of the Administrative Disqualification Hearing on November 12, 2010, by first class mail. The notice was sent to -----, -----, This is the address at which Defendant receives his SNAP benefits.
- 3) The hearing was scheduled for 10:00 a.m. on December 17, 2010, and as of 10:15 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

- 4) On August 25, 2010, the Investigations and Fraud Management (IFM) Unit received a referral (Exhibit M-2) from an Economic Service Worker in ██████ County, WV, which stated that a complaint had been received in that county. The complaint indicated that Defendant had sold \$237.33 in SNAP benefits to another SNAP recipient for \$60.00. On the same date, the IFM unit received an e-mail from another worker (Exhibit M-4) indicating that a SNAP recipient had come in to the ██████ County DHHR office in ██████ WV, to repay \$100 of the SNAP benefits in question. Department's representative testified that he told the ██████ County worker to instruct the individual who made the repayment to return to the ██████ County office on August 27, 2010, in order to meet with him to write a statement describing the purchase of the SNAP benefits.
- 5) On August 27, 2010, the individual who allegedly purchased the SNAP benefits returned to the ██████ County DHHR office. Department's representative testified that he met with her on that date and had her write a statement concerning the benefits purchase. (Exhibit M-6.) The statement reads as follows:

On 6-5-10 [Defendant and spouse] called me begging for help, saying their baby had been in the hospital with breathing difficulty [and] had been released [and] they didn't have any way to get his medicine [and] had no one who would help. Against my better judgment I agreed to purchase [SNAP benefits] for \$60.00 was what they said needed to pay for his (baby) med [and] diapers. I returned their card [and] told [Defendant] Please don't ask me to ever do this again for them because I would not . . . then on Tue[sday] 8-17-10 I get [sic] a message on my phone from [Defendant] stating I owed him \$189.00. I called Police [and] told them what I had done [and] let them listen to the message. I was advise [sic] to go to [DHHR] [and] talk to case worker [and] take care or straighten this out [and] ask [sic] if I had learned my lesson. So that's what I am doing. I know I made a huge mistake [and] am willing to make amends and promise [and] swear to never do anything remotely to [sic] this again.

Department's representative also testified that on August 27, 2010, he printed out the transaction history from the EBT card issued to Defendant's spouse (Exhibit M-5), indicating that \$200.00 was withdrawn from this EBT account on June 6, 2010.

- 6) Department's representative testified that Defendant was aware that selling his SNAP benefits was illegal and constituted an Intentional Program Violation (IPV). He submitted a Common Application Form (CAF) and Rights and Responsibility form (Exhibit M-7) during a SNAP benefits review conducted on May 25, 2010. The 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 that if I am found (by court action or an 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 . . .

Defendant has marked “Yes” at both of these items.

- 7) 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 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).

- 8) The West Virginia Income Maintenance Manual, Chapter 9.1.A.2.h, states:

h. Intentional Program Violation (IPV)

Persons who have been found guilty of an IPV are disqualified as follows:

- 1st offense: 1 year
- 2nd offense: 2 years
- 3rd offense: Permanent

- 9) The West Virginia Income Maintenance Manual, Chapter 20.2 states:

IPV's [sic] include making false or misleading statements, misrepresentations, 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].

VIII. CONCLUSIONS OF LAW:

The Department has provided clear and convincing evidence that the Defendant intentionally sold SNAP benefits in June, 2010. He signed a Rights and Responsibilities document indicating that he was aware that his SNAP benefits were to be used only for him and his family, and of the penalties for improperly using them.

IX. DECISION:

Trafficking in SNAP benefits is a clear violation of the regulations of SNAP. 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, or the Food Stamp program, for a period of twelve (12) months to begin effective March 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of February, 2011.

**Stephen M. Baisden
State Hearing Officer**