



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

Earl Ray Tomblin
Governor

BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Karen L. Bowling
Cabinet Secretary

April 26, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1285

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Cassie Burns, [REDACTED] County DHHR

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

██████████,

Defendant,

v.

Action Number: 16-BOR-1285

**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 February 12, 2016. 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 April 12, 2016.

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

At the hearing, the Department appeared by Cassie Burns, Criminal Investigator. The Department's representative was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

M-1 Code of Federal Regulations, Title 7 §273.16

M-2 United States Department of Agriculture Food and Nutrition Service Administrative Case for ██████████

M-3 Electronic Benefit Transfer (EBT) Transaction History for Defendant from November 2014-January 2015

M-4 EBT Transactions for ██████████ from October 2014-December 2015

M-5 SNAP Review Form dated July 16, 2012

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 Department alleged that the Defendant committed an Intentional Program Violation by trafficking his SNAP benefits and requested that a SNAP penalty of twelve (12) months be imposed against him.
- 2) The Defendant was notified of the hearing by scheduling order sent on March 8, 2016. The Defendant failed to appear for the hearing or provide good cause for his failure to do so. In accordance to 7 CFR §273.16(e) (4)) and West Virginia Department of Health and Human Resources' Common Chapters Manual, §740.20, the hearing was held without the Defendant in attendance.
- 3) [REDACTED] store was disqualified (M-2) by the United States Department of Agriculture Food and Nutrition Service (USDA-FNS) division for trafficking SNAP benefits in February 2015. The Defendant was implicated (M-4) as trafficking his SNAP benefits with [REDACTED] store based on a pattern of purchases made with his EBT card.
- 4) [REDACTED] (M-2) is a rural, 1600 square foot convenience type store which carries a limited amount of fresh meats, dairy items, breads, snacks, frozen foods, and various sundries.
- 5) The Department contended that the Defendant had several purchases (M-3) deemed to be excessively large for the type and size of [REDACTED] and alleged that the Defendant was trafficking his SNAP benefits with the store, either purchasing non-food items or exchanging his benefits for cash. Additionally, the Defendant made consecutive purchases at [REDACTED], which was indicative of the Defendant "running a tab" at the store, and paying this account off with his SNAP benefits.
- 6) The Defendant made three (3) transactions (M-3) with [REDACTED] on December 9, 2014, in the amounts of \$103.31, \$4.99 and \$52.95. The Appellant made four (4) transactions with [REDACTED] on January 9, 2015, in the amounts of \$93.15, \$10.58, \$8.08 and \$44.91. The January 9 transactions were made within minutes of each other.

APPLICABLE POLICY

Code of Federal Regulations 7 CFR §273.16, establishes that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts, violating the Food Stamp Program, or any State statute for the purpose of acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system has committed an Intentional Program Violation (IPV).

West Virginia Income Maintenance Manual §20.C.2 defines an IPV and establishes that IPV's 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. Once an IPV has been established, a disqualification period must be imposed on the Assistance Group (AG) member who committed the violation. Furthermore, IPV claims must be established for trafficking-related offenses. Claims arising from trafficking-related offenses are the value of the trafficking benefits as determined by the individual's admission, adjudication, or documentation that forms the basis of the trafficking determination.

West Virginia Income Maintenance Manual §9.1 sets forth the penalties for individuals found guilty of an IPV as follows: First Offense, twelve (12) month disqualification; Second Offense, twenty-four (24) month disqualification; Third Offense, permanent disqualification.

Code of Federal Regulations 7 CFR §271.2 defines trafficking as the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via EBT cards, card numbers and personal identification numbers, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone.

DISCUSSION

The Defendant's EBT transaction history showed several large purchases made at [REDACTED], and several of these transactions were made within minutes of each other. The pattern of these transactions supports the Department's allegations of trafficking based upon the limited quantity of eligible food items available for purchase at [REDACTED].

The Defendant did not appear for the hearing to dispute the trafficking allegations or provide an explanation for the unusual purchases made at [REDACTED].

CONCLUSIONS OF LAW

The Department provided clear and convincing evidence that the Defendant trafficked his SNAP benefits and therefore his actions meet the definition of an Intentional Program Violation.

DECISION

It is the finding of the State Hearing Officer that the Defendant committed an Intentional Program Violation and is subject to a 12-month sanction from participation in the Supplemental Nutrition Assistance Program, effective June 2016.

ENTERED this 26th day of April 2016

**Kristi Logan
State Hearing Officer**