



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402**

**Earl Ray Tomblin
Governor**

**Karen L. Bowling
Cabinet Secretary**

May 3, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1447

Dear [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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Cassandra Burns, WV DHHR

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

██████████,

Defendant,

v.

Action Number: 16-BOR-1447

**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 March 7, 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 21, 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 (IPV) and therefore should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Movant appeared by Cassandra Burns, Criminal Investigator with Investigations and Fraud Management (IFM). The Department's representative was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- D-1 Electronic Code of Federal Regulations, Title 7, §273.16
- D-2 2015 United States Department of Agriculture Food and Nutrition Services (USDA-FNS) division investigation materials and sanction determination for ██████████
██████████
- D-3 JPMorganChase EBT Administration System Transaction History printout from January 23, 2013 to February 25, 2015 of Defendant's EBT card
- D-4 Signed, sworn, witnessed statement given to IFM investigators by ██████████, dated October 5, 2015
- D-5 Signed, sworn, and witnessed statement given to IFM investigators by ██████████
██████████, dated October 6, 2015

- D-6 Signed, sworn, and witnessed statement given to IFM investigators by [REDACTED], dated October 5, 2015
- D-7 Electronic Code of Federal Regulations, Title 7, §271.2
- D-8 West Virginia Department of Health and Human Resources Rights and Responsibilities, signed and dated March 10, 2011
- D-9 West Virginia Income Maintenance Manual (IMM) §20.2
- D-10 Advance Notice of Administrative Disqualification Hearing Waiver, ig-ifm-ADH-Ltr, dated February 24, 2016, and Waiver of Administrative Disqualification Hearing, ig-ifm-ADH-waiver

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 Movant alleged that the Defendant committed an Intentional Program Violation (IPV) of SNAP benefits, and requested that a SNAP penalty of twelve (12) months be imposed against her.
- 2) The Defendant was notified of the hearing by scheduling order sent on March 10, 2016. The Defendant failed to appear for the hearing or provide good cause for her 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) The USDA-FNS division investigated [REDACTED], West Virginia, ([REDACTED]) for possible trafficking of SNAP benefits. It determined that [REDACTED] was a door-to-door meat and seafood delivery service that also has a small 200-square-foot storefront in [REDACTED] West Virginia. The storefront did not have any storage space to keep an inventory of frozen meats and seafood, and items were purchased on-line or made by calling for a delivery. (Exhibit D-2)
- 4) In February 2015, the USDA-FNS division permanently disqualified [REDACTED] as a SNAP retailer for trafficking SNAP benefits. In its analysis of [REDACTED] EBT transactions, the USDA-FNS division found that the EBT transactions established clear and repetitive patterns of unusual, irregular, and inexplicable activity for their type of retail business. (Exhibit D-2)
- 5) The Defendant's Electronic Benefits Transfer (EBT) account was identified by the USDA-FNS division investigation as having a questionable transaction because it was excessively large for the type and size of [REDACTED], and was therefore flagged as possible SNAP trafficking activity, which IFM was requested to investigate. (Exhibit D-2)

- 6) During the course of IFM's investigation of the Defendant, three separate individuals provided signed, sworn and witnessed statements to the IFM investigators in October 2015. (Exhibits D-4, D-5 and D-6)
- 7) [REDACTED] (Mr. [REDACTED] a customer of [REDACTED], provided a signed, sworn and witnessed statement that the Defendant was an employee of [REDACTED] and drove one of the delivery trucks. Mr. [REDACTED] attested to the fact that Defendant allowed sales of [REDACTED] merchandise with both a payment prior to receiving the goods and/or allowing receipt of the merchandise with a future debit of the EBT card. (Exhibit D-6)
- 8) [REDACTED] (Ms. [REDACTED] wife of [REDACTED], who gave the IFM investigators a separate signed, sworn and witnessed statement, also reported purchasing [REDACTED] merchandise from the Defendant on credit with the EBT card. (Exhibit D-5)
- 9) [REDACTED] (Ms. [REDACTED] provided a signed, sworn and witnessed statement that the Defendant who worked for [REDACTED] would allow purchases of [REDACTED] merchandise for later payment with her EBT card. (Exhibit D-4)
- 10) Upon investigation of the Defendant's EBT transaction history from January 23, 2013 to February 25, 2015, the Movant determined there were several large transactions with [REDACTED] which were indications of trafficking of SNAP benefits. (Exhibit D-3)
- 11) The Defendant has been a recipient of SNAP benefits on and off since 2010 and signed the Rights and Responsibilities form acknowledging that she understood that EBT SNAP benefits could not be used for purchase of food on credit. (Exhibit D-8)

APPLICABLE POLICY

Pursuant to the Code of Federal Regulations (CFR), 7 CFR §273.16, an Intentional Program Violation (IPV) 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.

IMM §20.2.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.

WV Common Chapters §740.11.D defines an IPV as: 1) intentionally making a false or misleading statement, or misrepresenting, concealing or withholding facts; or 2) committing 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.

WV Common Chapters §740.22.I directs the Hearing Official to rule on the admissibility of any evidence presented by either party at a hearing. In ruling on the admissibility of evidence, the Hearing Official shall consider the factors of relevancy, reliability, and repetitiveness. Additionally, WV Common Chapters §740.22.J states that the West Virginia Rules of evidence do not apply in these hearings, but may be considered when determining admissibility of evidence so that the truth may be ascertained and the proceedings justly determined.

WV Common Chapters §740.22.K explains that the Hearing Official shall base the determination of IPV on clear and convincing evidence that demonstrates that the Defendant committed, and intended to commit, an IPV as defined in WV Common Chapters §740.11.D. The Hearing Official shall render a decision after weighing the evidence and testimony presented given at the hearing. In rendering a decision, the Hearing Official shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and controlling court orders.

DISCUSSION

In a separate investigation, the USDA-FNS division found [REDACTED], West Virginia was trafficking SNAP benefits and, therefore, permanently disqualified it from participating as a SNAP retailer. In its investigation, the USDA-FNS division identified the Defendant's EBT account as containing a questionable purchase which was deemed to be suspect due to amount of the purchase relative to the size and inventory of [REDACTED]. An investigation of the Defendant ensued by the Movant who determined that the Defendant had intentionally violated the SNAP program. The Movant found that the Defendant provided merchandise on credit for a promise of future payment of a customer's EBT benefits. Additionally, the Movant found that the Defendant's own EBT benefits were used to purchase large quantities of merchandise from [REDACTED] on credit.

The Movant asserted that as an employee of [REDACTED] and as a long-time recipient of SNAP benefits, the Defendant was well aware of the parameters of SNAP EBT card usage and the penalties that may be imposed for violation of those terms. The Defendant has been a recipient of SNAP benefits on and off since 2010. SNAP Rights and Responsibility documents are signed each time an individual makes a SNAP application or a recertification of benefits. The first statement acknowledged on this form specifically states, "I understand that I may not use my EBT SNAP benefits to purchase food on credit. This means I cannot pay for food already purchased or food to be received in the future."

The Movant presented three signed, sworn and witnessed statements made against the Defendant reporting that she was an employee of [REDACTED] and sold merchandise from [REDACTED] delivery

trucks on credit with a later debit to the EBT account. The identity of each of these individuals was verified, and the statements were signed under oath, certifying the truth and correctness of the statements given, and was witnessed by a third party:

- [REDACTED] (Mr. [REDACTED] reported that the Defendant was an employee of [REDACTED] and drove one of their delivery trucks, stating that the Defendant would “always swipe the card [EBT], but she never gave us any cases [of food]. She still owes us money and a case of food.” Mr. [REDACTED] also stated to the investigators that the Defendant “would mostly give us the meat and then run the card later and debit it for when the SNAP benefits came.”
- [REDACTED] (Ms. [REDACTED] wife of [REDACTED] gave the IFM investigators a separate signed, sworn and witnessed statement that she would purchase [REDACTED] merchandise from the Defendant on credit with the EBT card, reporting that the Defendant “would come to my house. I would buy food on credit ... I only bought food on credit once or twice.” Ms. [REDACTED] also stated that the Defendant “offered to give me money if I ever wanted to sell my SNAP at \$.50 on the dollar.” (Exhibit D-5)
- [REDACTED] (Ms. [REDACTED] reported that the Defendant would allow purchases of [REDACTED] merchandise for later payment with her EBT card, stating that the Defendant “comes around to sell meat” for [REDACTED], and that “sometimes she [Defendant] would come the day before and copy my card, ‘run it the next day’ she would ask me when my stamps [SNAP benefits] came in. She would give me the meat because sometimes when you are low on meat it helps, and if you don’t want to do that she would say she was coming to get the meat she left in advance.” (Exhibit D-4)

Policy allows the Hearing Officer to consider any evidence as long it is relevant, reliable, and appropriate to ascertain the truth and make a just determination. In reviewing the statements given, they are found to be reliable as the identification of each individual was made prior to taking the statements by the investigators, an oath was administered to each declarant, and all the statements were signed and witnessed by a third party. When reviewing the documentation of the type of business that [REDACTED] conducted without any storage capacity for merchandise, these statements corroborate the type of transactions the Defendant used for selling large quantities of the [REDACTED] merchandise. The Defendant failed to appear to refute these allegations.

The Movant also asserted that the EBT transactions made on the Defendant’s EBT card showed a pattern of several large transactions with [REDACTED] made from March 2013 to June 2014 which indicated the use of the benefits for credit purchases in violation of SNAP program benefits. Some of these large transactions were made on the same day or within several days of each other:

- 3/26/13 for \$100 and \$92
- 9/6/13 for \$201 and 9/7/13 for \$108
- 10/7/13 for \$200 and 10/10/13 for \$200
- 11/6/13 for \$300
- 12/11/13 for \$100 and 12/13/13 for \$100
- 1/6/14 for \$201

- 2/6/14 for \$202
- 6/10/14 for \$288
- 7/11/14 for \$400
- 8/10/14 for \$312 and 8/12/14 for \$100
- 9/8/14 for \$260 and 9/12/14 for \$240
- 10/6/14 for \$368
- 11/6/14 for \$400
- 12/10/14 for \$202
- 1/7/14 for \$300

Again, in reviewing the documentation of the type of business that [REDACTED] operated under without any storage capacity for merchandise, along with the course of activity that the Defendant undertook as an employee of [REDACTED] with other customer's EBT card transactions, these large transactions made on the Defendant's own EBT account, showed by clear and convincing evidence that the Defendant participated in intentional program violations of SNAP EBT benefits as defined in state and federal statutes and regulations for purchases made with [REDACTED] from March 2013 to January 2014. The Defendant failed to appear to refute or explain these transactions.

CONCLUSION OF LAW

The Movant showed by clear and convincing evidence that the Defendant knowingly participated in SNAP program violations by purchasing merchandise on credit with [REDACTED] and allowing others to purchase merchandise on credit with [REDACTED] with EBT SNAP benefit cards from March 2013 to January 2014.

DECISION

It is the ruling of the State Hearing Officer that the Defendant did commit an Intentional Program Violation. The Defendant will be disqualified from participation in SNAP for a period of twelve (12) months to begin effective June 1, 2016.

ENTERED this 3rd day of May 2016.

Lori Woodward, State Hearing Officer