



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

April 27, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1448

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: Defendant'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-1448

**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 Defendant appeared *pro se*. The parties were 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 Service (USDA-FNS) division investigation materials and sanction determination for ██████████
- D-3 Signed statement given to IFM investigators dated October 5, 2015
- D-4 JPMorganChase EBT Administration System Transaction History printout of Defendant's EBT card from January 5, 2013 to September 7, 2015
- D-5 West Virginia Department of Health and Human Resources (DHHR) SNAP review form and Rights and Responsibilities, signed and dated December 12, 2012
- D-6 West Virginia Income Maintenance Manual (IMM) §20.2

D-7 Advance Notice of Administrative Disqualification Hearing Waiver, ig-ifm-ADH-Ltr, dated February 22, 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) by trafficking of SNAP benefits, and requested that a SNAP penalty of twelve (12) months be imposed against her.
- 2) [REDACTED] is a door-to-door meat and seafood delivery service that also has a small storefront in [REDACTED] West Virginia. (Exhibit D-2)
- 3) In February 2015, the USDA-FNS division made a determination that [REDACTED] violated SNAP regulations due to an analysis of its EBT transactions which were found to consist of a series of multiple transactions made from individual benefit accounts in unusually short time frames and/or excessively large purchase transactions from recipient accounts for the size and type of their retail store. Consequently, [REDACTED] was charged with SNAP trafficking and was permanently disqualified as a SNAP retailer. (Exhibit D-2)
- 3) The Defendant's EBT account was identified by the USDA-FNS division investigation as having a pattern of purchases made with her EBT card at [REDACTED], and was suspect for possible SNAP trafficking. (Exhibit D-2)
- 4) During IFM's investigation regarding the Defendant's transactions with [REDACTED], the Defendant gave a signed statement to the investigators stating she had "let a friend use my card to buy food at [REDACTED] [REDACTED]". She noted that "my friend who was using the card was giving me \$.50 on the dollar. Every transaction with [REDACTED] [REDACTED], my friend was using the card. On 1/9/13 \$65.00, 4/9/13 \$100.00, 5/13/13 \$60.00, 6/5/13 \$200.00, 6/7/13 \$50.00, always the same person, 7/15/13 \$87.00, 8/7/13 \$110.00, 8/9/13 \$40.00, 9/5/13 \$96.00, 9/7/13 \$30.00, 10/7/13 \$100.00, 10/12/13 \$90.00, 11/5/13 \$150.00, 11/5/13 \$75.00, 11/6/13 \$75.00. He would be selling the food that he bought from [REDACTED] [REDACTED]." (Exhibit D-3)
- 5) The Defendant also admitted in her statement to the investigators that she would allow her "sister" to use her EBT card at [REDACTED] and [REDACTED] stating that she would not go with "them", and that her sister also "lets me use her benefits." The Defendant

admitted to the investigators in her statement that the “double transactions” at [REDACTED] and [REDACTED] are because “someone else is using my [EBT] card.” (Exhibit D-3)

- 6) The Defendant appeared at the hearing; however, she exercised her right to remain silent and provided no testimony to refute the allegations made by the Movant.

APPLICABLE POLICY

Pursuant to the Code of Federal Regulations 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.

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.

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, §740.22.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 found [REDACTED], West Virginia was trafficking SNAP benefits. Consequently, [REDACTED] was permanently disqualified from participating as a SNAP retailer. During the course of its investigation, the USDA-FNS

division identified the Defendant's EBT account as containing questionable purchases from [REDACTED] which were deemed to be suspect of SNAP trafficking.

An investigation of the Defendant ensued by IFM who determined that the Defendant had participated in SNAP trafficking by selling her SNAP benefits. Notwithstanding the Defendant's signed sworn statement to the IFM investigators on October 5, 2015, admitting selling her SNAP benefits for purchases made at [REDACTED] and allowing an unauthorized, non-assistance group, individual to purchase food at [REDACTED] and [REDACTED] on multiple occasions with her EBT card, the EBT transactions corroborates her statement.

As the Defendant chose to exercise her right to remain silent, she did not refute any of the Movant's testimony or evidence. The Movant showed by clear and convincing evidence that the Defendant knowingly committed an Intentional Program Violation by trafficking her EBT card benefits as defined in state and federal statutes and regulations for purchases made with [REDACTED], [REDACTED] and [REDACTED] from January 2013 to August 2015.

CONCLUSION OF LAW

The Movant showed by clear and convincing evidence that the Defendant participated in SNAP trafficking as defined in state and federal statutes and regulations.

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 27th day of April 2016.

Lori Woodward, State Hearing Officer