



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 12, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1452

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-1452

**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 26, 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 failed to appear. 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 Service (USDA-FNS) division investigation materials and sanction determination for ██████████
██████████
- D-3 JPMorganChase EBT Administration System Transaction History printout of Defendant's EBT card from January 3, 2014 to June 7, 2014
- D-4 Incarceration history for the Appellant from January to December 2014
- 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 23, 2016, and Waiver of Administrative Disqualification Hearing, ig-ifm-ADH-waiver
- D-8 Signed statement given to IFM investigator dated October 8, 2015

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) 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 April 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) The Defendant was incarcerated at Eastern Regional Jail on January 31, 2014, and was subsequently transferred to the [REDACTED] on December 2, 2014 with an anticipated release date of November 2015. (Exhibits D-4 and D-8)

- 7) During the course of IFM's investigation of the Defendant, she provided a signed sworn statement to the IFM investigator in October 2015 admitting to giving her EBT card and Personal Identification Number (PIN) to [REDACTED] when the Defendant was incarcerated. (Exhibit D-8)
- 8) [REDACTED] is neither an Assistance Group (AG) member nor an authorized EBT user of the Defendant's SNAP benefits. (Exhibit D-5)
- 9) There were several transactions made on the Defendant's EBT card from March 14, 2014 through June 7, 2014 at various retail stores in the community while the Defendant was incarcerated, some of which were with [REDACTED]. (Exhibit D-3)

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.

IMM §1.4.T.3.a defines an authorized user as an individual, who, in addition to the payee, may be issued an EBT card and access an EBT account.

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

The USDA-FNS found [REDACTED], West Virginia trafficked SNAP benefits and permanently disqualified the business from participating as a SNAP retailer. During the course of its investigation, the USDA-FNS division identified the Defendant's EBT account as containing a questionable transaction on January 6, 2014 in the amount of \$300 from [REDACTED] which was 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 transferring her EBT SNAP benefit card along with her PIN to an unauthorized non-assistance group individual. The Defendant admitted to transferring her EBT card and PIN to [REDACTED] in a sworn statement to the IFM investigator on October 15, 2015. The evidence presented corroborated the Defendant's statement and showed that there were multiple transactions made with the Defendant's EBT card from March 14, 2014 through June 7, 2014 while she was incarcerated.

The Department's witness testified that the Defendant has been a participant in the SNAP program on and off since 2009 and has signed the Rights and Responsibilities form on several different occasions. Exhibit D-5, page 7 of 10, statement number 1, emphasizes, in pertinent part, "I understand that the SNAP benefits are to be used by my family and me to purchase food or seeds." Additionally, statement number 4 on the same page recites the penalties for committing an intentional program violation. By signing the Rights and Responsibilities form, the Defendant certified that she read, understood, and accepted the rights and responsibilities, and that all of the information provided was true and correct.

The Defendant failed to appear to refute any of the Movant's evidence. The Movant showed by clear and convincing evidence that the Defendant knowingly committed an Intentional Program Violation by transferring her EBT card benefits and PIN to an unauthorized non-assistance group individual as defined in state and federal statutes and regulations for purchases made from March to June 2014.

CONCLUSIONS OF LAW

- 1) The Code of Federal Regulations defines trafficking as the buying, selling, stealing, or otherwise affecting 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.
- 2) The Defendant was notified timely of the March 10, 2016 Administrative Disqualification Hearing, but failed to appear and refute the evidence submitted in support of an IPV. The evidence confirms the Defendant provided her EBT card and

personal identification number to an unauthorized individual that otherwise affected an exchange of SNAP benefits via her EBT card. This action constitutes SNAP trafficking.

- 3) There is clear and convincing evidence that the Defendant committed an Intentional Program Violation as defined in the SNAP policy and regulations.
- 4) Pursuant to SNAP policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first offense is 12 months.

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 12th day of May 2016.

Lori Woodward, State Hearing Officer