



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
203 East Third Avenue  
Williamson, WV 25661**

**Earl Ray Tomblin  
Governor**

**Karen L. Bowling  
Cabinet Secretary**

April 15, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-1453

Dear Ms. [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,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

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

cc: Cassandra Burns, Criminal Investigator

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

██████████,

**Defendant,**

**v.**

**Action Number: 16-BOR-1453**

**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 Section 273.16. The hearing was convened on April 14, 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 thus should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for twelve months.

At the hearing, the Department appeared by Cassandra Burns, Criminal Investigator. The Defendant did not appear. All participants were sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- M-1 Code of Federal Regulations §273.16
- M-2 Cashier's receipt and two security camera photographs from a ██████████, dated January 9, 2016
- M-3 Electronic Benefits Transfer (EBT) card Transaction history for ██████████, listing purchases made from December 11, 2015 through January 21, 2016
- M-4 EBT card Transaction history for Defendant, listing purchases made from January 8, 2016, through February 9, 2016
- M-5 Advance Notice of Administrative Disqualification Hearing Waiver, dated February 25, 2016
- M-6 SNAP mail-in review form, signed and dated by Defendant on August 16, 2015
- M-7 West Virginia Income Maintenance Manual (WV IMM) Chapter 20, §20.2

### **Defendant's Exhibits**

None

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's representative contended the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because she purchased another SNAP recipient's Electronic Benefits Transfer (EBT) card and used it to access \$114.34 in SNAP benefits to which she was not entitled.
- 2) On February 9, representatives from the Investigations and Fraud (IFM) Unit interviewed Ms. [REDACTED] at the [REDACTED], concerning an anonymous report that she had been selling her SNAP benefits by allowing others to use her EBT card. Ms. [REDACTED] signed a waiver admitting the report was true and accepting an Intentional Program Violation (IPV) disqualification from the SNAP program.
- 3) The IFM representatives investigated Ms. [REDACTED] EBT card usage and attempted to find evidence at each usage location to indicate Ms. [REDACTED] used her card properly. At one transaction dated January 9, 2016, at 5:38 PM, they obtained surveillance camera footage (Exhibit D-2) that showed someone making a purchase at a checkout terminal at the [REDACTED] WV, [REDACTED]. The person making this purchase was identified as someone other than Ms. [REDACTED] and later was identified as the Defendant. The amount of the purchase, \$114.34, was entered on Ms. [REDACTED] EBT card (Exhibit D-3).

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual (WV IMM) Chapter 1.2.E states that it is the client's responsibility to provide information about his/her circumstances so the worker is able to make a correct decision about his/her eligibility.

WV IMM Chapter 20.2.C.2 provides that once an IPV (Intentional Program Violation) is established, a disqualification penalty is imposed on the AG members who committed the IPV. The penalties are as follows: First Offense – one year disqualification; Second Offense – two years disqualification; Third Offense – permanent disqualification.

Pursuant to the Code of Federal Regulations 7 CFR Section 273.16, an Intentional Program Violation shall consist of a SNAP recipient 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.

### **DISCUSSION**

The Department's representative testified that after receiving a report that Ms. [REDACTED] had sold SNAP benefits by giving access to her EBT card, and after obtaining a waiver from Ms. [REDACTED] who did not contest his allegation, the IFM unit determined the Defendant used Ms. [REDACTED] EBT card on January 9, 2016. She testified that the Defendant was identified from still photographs (Exhibit D-2) taken from the security cameras of the supermarket where the purchase occurred.

The Department did not present photographs of the Defendant or Ms. [REDACTED] in order to determine who made the purchases. There was no testimony offered that indicated how the Defendant was identified as the person in the surveillance photographs. The Department's representative testified that she interviewed Ms. [REDACTED] from a correctional facility, but she also stated that Ms. [REDACTED] was not incarcerated until February 4, 2016, after the \$114 purchase was made. The Department did not provide clear and convincing evidence to the effect that the Defendant improperly accessed SNAP benefits intended for Ms. [REDACTED].

### **CONCLUSION OF LAW**

The Department did not provide clear and convincing evidence that the Defendant committed an Intentional Program Violation, as defined in the Code of Federal Regulations 7 CFR §273.16. No disqualification penalty will be imposed upon the Defendant's SNAP benefits.

### **DECISION**

It is the ruling of the Hearing Officer that the Department did not provide clear and convincing evidence that the Defendant committed an Intentional Program Violation. She will not be disqualified from participating in SNAP.

**ENTERED this 15<sup>th</sup> Day of April 2016.**

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**Stephen M. Baisden  
State Hearing Officer**