



**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**

May 9, 2016



RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1486

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,

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

Encl: Defendant'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-1486

**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 10, 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 May 3, 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 appeared *pro se*. Both participants were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations §273.16
- M-2 United States Department of Agriculture Food and Nutrition Services (USDA-FNS) investigation materials and sanction determination for ██████████, ██████████ WV, dated February 6, 2015
- M-3 Electronic Benefits Transfer (EBT) Card Transaction History for Defendant, listing purchases made from January 7, 2014 through August 12, 2015
- M-4 SNAP telephone review form, signed and dated by Defendant on July 27, 2013
- M-5 West Virginia Income Maintenance Manual (WV IMM) Chapter 20, §20.2
- M-6 Copy of IG-IFM-ADH-waiver, Waiver of Administrative Disqualification Hearing form, and IG-IFM-ADH-Ltr, Notice of Intent to Disqualify form, sent to Defendant on February 26, 2016

Defendant's Exhibits

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 he trafficked in SNAP benefits.
- 2) The US Department of Agriculture – Food and Nutrition Services (USDA-FNS), which has oversight of SNAP, notified the WV DHHR that the USDA-FNS had disqualified [REDACTED] of [REDACTED] WV, from being a SNAP vendor because the business had engaged in the trafficking of SNAP benefits (Exhibit M-2).
- 3) [REDACTED] is a small convenience store, approximately 1,600 square feet in size, which sells ice, beer and soda, and a few incidental-need items like bread and milk. [REDACTED] does not sell items such as fresh meats, which would correspond to legitimate large-amount purchases.
- 4) According to the USDA-FNS documentation (Exhibit M-2, page 4), the Defendant spent \$194.33 in SNAP benefits on October 7, 2014, \$187.67 in SNAP benefits on November 7, 2014, and \$194.00 in SNAP benefits on December 7, 2014, all at [REDACTED]. The Department's representative identified these as SNAP trafficking activities, either in receiving cash from the purchase instead of food items or paying off previous "store credit" purchases.
- 5) According to the Defendant's Electronic Benefits Transfer (EBT) card transaction history (Exhibit M-3), he received his SNAP benefit issuance on each of the above three days, October 7, November 7 and December 7, 2014.
- 6) The Defendant protested the establishment of a SNAP Intentional Program Violation against him, and disputed the allegations of the Department's representative that the purchases reflected SNAP trafficking on his part.

APPLICABLE POLICY

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

██████████ is a small rural convenience store that does not sell fresh meats or large varieties of canned foods. The store does sell fresh fruits and vegetables, but the photographs included in the documents from the USDA-INS (Exhibit M-2) show only a limited amount of them displayed for sale. The Department's representative testified that it would be hard to make \$180 to \$200 food purchases at this location, and it would be an extremely unwise use of someone's SNAP benefits even if he or she could do so. She added that the prices ██████████ ██████████ charged for their food items were far higher than larger supermarkets which were no more than a fifteen-mile drive from this establishment.

The Defendant testified that he was well aware of the fact that ██████████ was a much more expensive place to buy one's food than at a large supermarket. He testified that he had to buy his food at ██████████ because he did not have a vehicle to make the fifteen-mile drive to the nearby town of ██████████ WV, to shop at larger store.

The case against the Defendant is circumstantial. Although the selection of items for sale at ██████████ appears to be quite limited, it may be possible, however unlikely, to spend \$180 to \$200 in food purchases there. However, ██████████ was identified by the USDA-FNS as a location that had engaged in extensive SNAP trafficking, to the extent that it was permanently banned as a SNAP vendor. Also, the Defendant spent nearly the full amount of his SNAP issuance at that location every month, on the day his benefits became available to him. Therefore, in consideration of the history of SNAP abuse that occurred at ██████████ and the Defendant's pattern of SNAP use every month, the Department has proved by clear and convincing evidence that the Defendant committed an Intentional Program Violation (IPV) by trafficking in SNAP benefits.

CONCLUSION OF LAW

- 1) Pursuant to the Code of Federal Regulations 7 CFR §273.16, the Department established that the Defendant trafficked in SNAP benefits at a small convenience store in rural ██████████ County, WV, which had been identified by the USDA-FNS as a retail business that had engaged in this activity. The Defendant committed an Intentional Program Violation by doing this.

- 2) The Department must impose a disqualification penalty. The disqualification penalty for a first offense is one year.

DECISION

It is the ruling of the Hearing Officer that the Defendant committed an Intentional Program Violation. He will be disqualified from participating in SNAP for one year, beginning June 1, 2016.

ENTERED this 9th Day of May 2016.

**Stephen M. Baisden
State Hearing Officer**