



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

May 19, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1495

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Juna Woodall, Department Representative

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

██████████,

Defendant,

v.

Action Number: 16-BOR-1495

**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 11, 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 May 3, 2016.

The matter before the Hearing Officer arises from a request by the Movant 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 12 months.

At the hearing, the Movant appeared by Juna Woodall. The Defendant was notified of the hearing but failed to appear, resulting in the hearing being held in the Defendant's absence. All witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- | | |
|-----|---|
| D-1 | Code of Federal Regulations, 7 CFR §273.16 |
| D-2 | Screen prints from the Movant's data system showing the SNAP access card replacement history for the Defendant |
| D-3 | Documents from a SNAP transaction for the Defendant's account on January 8, 2016: Transaction detail screen print from the Movant's data system; Copy of the transaction receipt from the vendor; Screen prints of security camera photographs, stamped for time and date |

- D-4 Screen prints of the demographic information for the household members in the Defendant's SNAP case, from the Movant's data system
- D-5 Screen prints of driver's license data and photographs of the Defendant
- D-6 Documents from a SNAP transaction for the Defendant's account on February 8, 2016: Transaction detail screen print from the Movant's data system; Copy of the transaction receipt from the vendor; Screen prints of security camera photographs, stamped for time and date
- D-7 Rights and Responsibilities form for SNAP, signed by the Defendant on April 10, 2015
- D-8 WVIMM, §20.2
- D-9 Administrative Disqualification Hearing documents

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 receives a periodic report showing irregular replacement patterns for the cards used to access SNAP benefits, and initiated an investigation of the Defendant on this basis.
- 2) The Defendant was an active SNAP recipient with an access card listed in an "Active Card" status as of January 8, 2016. (Exhibit D-2)
- 3) The Defendant's SNAP access card was used for a transaction on January 8, 2016. (Exhibit D-3)
- 4) The Defendant's SNAP access card was reported stolen, resulting in its status being switched to "Stolen" on January 14, 2016, and a new access card being issued to the Defendant. (Exhibit D-2)
- 5) The Defendant's access card was once again in "Active Card" status as of January 25, 2016. (Exhibit D-2)
- 6) The Defendant's SNAP access card was used for a transaction on February 8, 2016. (Exhibit D-6)
- 7) The Defendant's SNAP access card was again switched to "Stolen" status as of March 7, 2016, again generating a new card for the Defendant. (Exhibit D-2)

- 8) The Movant contended the printed photographs from these transactions (Exhibits D-3 and D-6) show that neither the Defendant (Exhibit D-5) nor any authorized person from the Defendant's household (Exhibit D-4) made these transactions, and that these were intentional actions on the Defendant's part that constitute an Intentional Program Violation (IPV). The Movant requested this hearing for the purpose of making that determination.

APPLICABLE POLICY

The Code of Federal Regulations, 7 CFR §273.16(c) defines an IPV as having "committed any act that constitutes a violation...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)."

Common Chapters, §740.22.G, reads in part, "The burden of proof is on the Department to prove, by clear and convincing evidence, that the Defendant committed an Intentional Program Violation."

DISCUSSION

The Defendant did not appear for the hearing, and as such could not dispute facts presented by the Movant.

The testimony and evidence presented by the Movant shows irregular SNAP card usage and replacement history by the Defendant. The Movant did not show, by clear and convincing evidence, that this activity was intentional use, presentation, transfer, acquisition, receipt, possession or trafficking of the SNAP access card by the Defendant. The two transactions in question, which link SNAP transaction history from the Movant's data system to receipt and security camera footage from the SNAP vendors, may rise to a lower standard of proof but not to the clear and convincing standard required to establish an IPV and corresponding SNAP disqualification. Because the Defendant's household includes two individuals authorized to use the SNAP benefits, the Movant's burden was to show that neither individual was using the SNAP benefits appropriately in either transaction. Printed photographs, self-reported race demographics and speculations on an individual's apparent race do not establish the Movant's allegations.

CONCLUSION OF LAW

Because the Movant did not establish, through clear and convincing evidence, that the Defendant committed an act that meets the IPV definition, the Movant must not apply a SNAP disqualification for a first-offense IPV.

DECISION

It is the finding of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation.

ENTERED this ____ Day of May 2016.

**Todd Thornton
State Hearing Officer**