



**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**

June 6, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1510

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: Brian Shreve, Repayment Investigator

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

██████████,

Defendant,

v.

Action Number: 16-BOR-1510

**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 16, 2016. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (WV DHHR) Common Chapters Manual and Federal Regulations at 7 CFR Section 273.16. The hearing was convened on May 25, 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 Brian Shreve, Repayment Investigator. Appearing as witnesses for the Department were Darlene Bailey, and Mary Beth Copley, Economic Service Workers at the WV DHHR, ██████████ County Office. 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 E-mail from Department's Witness to Department's Representative, dated February 19, 2016
- M-3 Copy of the Defendant's Driver's License from the WV Department of Motor Vehicles and print-outs from the WV State Police with photographs of the Defendant
- M-4 Screen print from Defendant's case record listing members of Defendant's SNAP caseload

- M-5 DFA-RR-1, Rights and Responsibilities form from Defendant's SNAP case record, signed and dated by Defendant on November 26, 2015
- M-6 Code of Federal Regulations §271.2 (Definitions), January 22, 2016 update
- M-7 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 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 he intentionally attempted to sell his SNAP benefits for cash.
- 2) On February 12, 2016, at the [REDACTED] WV [REDACTED] store, a retail establishment that sells various goods including grocery items, the Defendant offered to buy an individual's food items with his Electronic Benefits Transfer (EBT) card, and told her she could pay him the cost of the items afterwards. The individual to whom he made this offer was an employee of the WV DHHR, [REDACTED] County office.
- 3) When the [REDACTED] County worker related this information to her co-workers, one of them told her the same person had made a similar proposition to her at the same retail establishment.
- 4) The Department's representative, a SNAP repayment investigator, showed the employees photographs of the Defendant from his WV Driver's License and from WV State Police records (Exhibit M-3). They identified the Defendant as the person who had approached them at the [REDACTED].
- 5) The Defendant did not appear at the hearing to refute the SNAP trafficking allegations.

APPLICABLE POLICY

WV IMM Chapter 20, §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 or access device.

The Federal Regulations 7 CFR §271.2 (Definitions), January 22, 2016 update, defines SNAP trafficking as: 1. The buying, selling, stealing or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone; 2. The exchange of firearms, ammunition, explosives or controlled substances, as defined in §802 of title 21, United States Code, for SNAP benefits; 3. Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount; 4. Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; 5. Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; 6. Attempting to buy, sell, steal or otherwise effect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion others, or acting alone.

DISCUSSION

The Department's representative requested the Administrative Disqualification Hearing based on reports that the Defendant was approaching individuals at a retail establishment in [REDACTED] WV, and was asking them if they would allow him to buy their food items with his EBT card and then pay him the cash value for the items.

The Department's representative called as witnesses the two DHHR employees who had been approached by the Defendant. They described their experiences as written above. The Department's representative showed them copies of the Defendant's WV Driver's License and photographs of him from WV State Police records. Both witnesses testified that he was the person who approached them at the [REDACTED].

There is no evidence that the Defendant actually obtained money by buying someone else's food with his EBT card and allowing him or her to reimburse him for the purchase. However, according to the January 22, 2016 update to Federal Regulations 7 CFR §271.2, SNAP trafficking occurs in the act of "attempting to buy, sell, steal or otherwise effect an exchange of

SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs) . . .”

The Department established that the Defendant attempted to sell his SNAP benefits, while the Defendant did not appear at the hearing to refute these allegations. Therefore, in the absence of any evidence or testimony to the contrary, the Department proved by clear and convincing evidence that the Defendant committed an Intentional Program Violation (IPV) by trafficking in SNAP benefits.

CONCLUSIONS OF LAW

- 1) Pursuant to the Code of Federal Regulations 7 CFR §273.16 and 7 CFR §271.2, the Department provided clear and convincing evidence that the Defendant trafficked in SNAP benefits by attempting to exchange food purchased with his EBT card for cash. He committed an Intentional Program Violation by doing so.
- 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 July 1, 2016.

ENTERED this 6th Day of June 2016.

**Stephen M. Baisden
State Hearing Officer**