



**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**

June 8, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1695

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

cc: Addison Hamilton, Investigations and Fraud Management

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

██████████,

Defendant,

v.

Action Number: 16-BOR-1695

**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 April 13, 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 24, 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 Department appeared by Addison Hamilton with Investigations and Fraud Management (IFM). The Defendant was notified of the hearing but failed to appear, resulting in the hearing being held in the Defendant's absence. The Department's representative was sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Code of Federal Regulations 7 CFR §273.1, et seq.
- D-2 Code of Federal Regulations 7 CFR §273.18
- D-3 Combined Application and Review Form - Financial, Medical and Supplemental Nutrition Assistance Program (SNAP) and accompanying Rights and Responsibilities, dated June 23, 2014
- D-4 Supplemental Nutrition Assistance Program (SNAP) – 6 or 12 month contact form (PRC2) dated May 27, 2015
- D-5 Witness statement signed and dated April 7, 2016

- D-6 EBT Administration System/Transaction Detail, dated January 4, 2015
- D-7 EBT Administration System/Transaction Detail, dated January 7, 2016
- D-8 WV Income Maintenance Manual (IMM), Chapter 20, §20.6
- D-9 WV Income Maintenance Manual (IMM), Chapter 20, §20.2
- D-10 Code of Federal Regulations 7 CFR §273.16 (excerpt)

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 alleged that the Defendant committed an Intentional Program Violation (IPV) by trafficking Supplemental Nutrition Assistance Program (SNAP) benefits, and requested that a SNAP penalty of twelve (12) months be imposed against him.
- 2) The Defendant was notified of the hearing by scheduling order mailed on April 19, 2016, by US Postal Service first class mail. The notice was sent to [REDACTED]. This was identified by Movant's representative as being Defendant's last known mailing address on file. The hearing was scheduled to begin at 9:00 a.m. on May 24, 2016, and as of 9:15 a.m., the Defendant failed to appear. The Defendant failed to provide good cause for his 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 Defendant has been a recipient of SNAP benefits, and signed the Rights and Responsibilities acknowledging his understanding that to buy, sell, trade, steal, or otherwise use SNAP benefits for monetary gain or other considerations is considered SNAP trafficking, and that the penalty for doing so would result in disqualification from the SNAP. (Exhibit D-3)
- 4) The Defendant's Assistance Group (AG) consisted of himself with no one else reported as an authorized representative to use his Electronic Benefit Transfer (EBT) card.
- 5) Surveillance imagery witnessed by the Movant's representative and corroborated by a written, sworn statement by [REDACTED], manager of the [REDACTED] ([REDACTED]) at [REDACTED] in [REDACTED] WV, confirmed that the Defendant used his EBT card to purchase food on two (2) occasions, January 4, 2016 and January 7, 2016, for someone else in exchange for cash. Purchases totaled \$30 of the Defendant's SNAP benefits. (Exhibits D-5, D-6 and D-7)

APPLICABLE POLICY

Pursuant to the Code of Federal Regulations (CFR), 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.

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.

WV Common Chapters §740.22.I directs the Hearing Official to rule on the admissibility of any evidence presented by either party at a hearing. In ruling on the admissibility of evidence, the Hearing Official shall consider the factors of relevancy, reliability, and repetitiveness. Additionally, WV Common Chapters §740.22.J states that the West Virginia Rules of evidence do not apply in these hearings, but may be considered when determining admissibility of evidence so that the truth may be ascertained and the proceedings justly determined.

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

After an investigation of the Defendant by the Movant, it was determined that the Defendant had participated in trafficking his SNAP benefits on January 4 and 7, 2016. The Movant found that the Defendant provided payment for merchandise on his EBT card in exchange for cash. The Movant asserted that as a recipient of SNAP benefits, the Defendant was aware of the parameters of SNAP EBT card usage and the penalties that may be imposed for violation of those terms. The Defendant acknowledged by signing the SNAP Rights and Responsibility documents on June 23, 2014 that he understands that to buy, sell, trade, steal, or otherwise use SNAP benefits for monetary gain or other considerations is considered SNAP trafficking, and that the penalty for doing so would result in disqualification from the SNAP.

The Movant's representative, Addison Hamilton (Mr. Hamilton), testified that due to technical difficulties, the video surveillance footage of the transactions on January 4 and 7, 2016 could not be downloaded to a disk to include as evidence. Therefore, he took a sworn, signed statement from the manager of the [REDACTED], [REDACTED] (Ms. [REDACTED] who knew the Defendant and his friend (only known as [REDACTED]) as regular customers of the store. Ms. [REDACTED] viewed the video surveillance footage and identified the Defendant on January 4, 2016 allowing [REDACTED] to select merchandise in the store and then paying for those items with his EBT card. Ms. [REDACTED] also identified the Defendant and [REDACTED] doing the same thing on January 7, 2016 on the video surveillance footage with the addition of an exchange of cash. Mr. Hamilton, who also viewed the video surveillance footage, testified that the footage on January 7, 2015 actually showed the Defendant paying for [REDACTED] items with his EBT card, receiving cash from [REDACTED] and then paying for his own items in a separate transaction.

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 clearly show the Defendant participated in SNAP trafficking as defined in state and federal statutes and regulations.

CONCLUSIONS OF LAW

- 1) The Movant showed by clear and convincing evidence that the Defendant knowingly participated in SNAP trafficking by purchasing merchandise for a non-Assistance Group member for an exchange of cash on January 4 and 7, 2016.
- 2) Because the action of the Defendant constitutes an IPV, the Movant must disqualify the Defendant from receipt of SNAP benefits.
- 3) The Defendant has committed a first-offense IPV and is subject to a twelve (12) month SNAP disqualification.

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 July 1, 2016.

ENTERED this 8th day of June 2016.

Lori Woodward, State Hearing Officer