



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
416 Adams St.
Fairmont, WV 26554

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

June 8, 2016



RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1783

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,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

cc: Cassie Burns, CI, WVDHHR

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

██████████,

Defendant,

v.

Action Number: 16-BOR-1783

**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 26, 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 June 7, 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 should thus be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Movant appeared by Cassie Burns, Criminal Investigator. The Defendant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Code of Federal Regulations 7 CFR §273.16
- D-2 Sworn statement by ██████████, Section Chief, Retailer Operations Division, USDA, Food and Nutrition Services (FNS), and his investigative findings at ██████████
- D-3 Electronic Benefit Transaction (EBT) History report for ██████████ for the period of January 2014 through January 2015
- D-4 FNS Documents - Record of EBT Transactions at ██████████ – (October 2014 through December 2014)
- D-5 SNAP application and Rights and Responsibilities signed by ██████████ on 11/26/13
- D-6 WV Income Maintenance Manual §20.2
- D-7 Advanced Notice of Administrative Disqualification Hearing Waiver and Waiver of Administrative Disqualification Hearing forms dated 4/11/16

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) A request for an Administrative Disqualification Hearing was received by the Board of Review from the West Virginia Department of Health and Human Resources, hereinafter Movant, on April 26, 2016. Movant contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a period of 12 months.
- 2) Evidence proffered by Movant reveals that the United States Department of Agriculture (USDA) Food and Nutrition Services (FNS) conducted an investigation (Exhibits D-2 and D-4) regarding trafficking Supplemental Nutrition Assistance Program (SNAP) benefits, and permanently disqualified retailer [REDACTED] from participation in the SNAP. The focus of the investigation concentrated on SNAP purchases made during the period of October 2014 through December 2014.
- 3) Evidence submitted by Movant (Exhibit D-3 - EBT Transaction History for the period of January 1, 2014 through January 2015) identifies large purchases, and several back-to-back purchases made by Appellant in a short period of time at [REDACTED]. Respondent's witness reported that this type of activity is indicative of the retailer allowing the Defendant to run a tab, or purchase items for which SNAP is not authorized. Movant contended that due to the size and volume of items available for purchase with SNAP at [REDACTED], it would be difficult to spend a large amount of SNAP benefits. According to Exhibit D-2, [REDACTED] is a rural, 1,600-square-foot, convenience type store which carries a limited amount of fresh meats, dairy items, breads, snacks, frozen foods, and various sundries.
- 4) As a matter of record, the Defendant acknowledged that [REDACTED] allowed him to run a tab (purchase items on credit) and purchase non-food items for which SNAP benefits are not legally authorized.
- 5) The Defendant signed SNAP application(s) and Rights and Responsibilities form(s) (Exhibit D-5), certifying that the information he provided was true and correct, and acknowledged the following:

I understand that SNAP benefits are to be used by or on behalf of my assistance group and me to purchase food or seeds. I cannot sell my SNAP benefits or use someone else's benefits for myself. The SNAP benefits will not be used for any other purpose.

I understand that I cannot do, or attempt to do the following either in public, in private, or online: buy, sell, trade, steal or otherwise use SNAP benefits for monetary gain or other considerations; purchase food in containers with deposits and discard the product to receive cash refund deposits; and purchase or sell food originally purchased with SNAP benefits for monetary gain or other considerations. Any of these actions is considered SNAP trafficking.

I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive Food Stamp benefits as follows: First Offense – one year; Second Offense – two years; Third Offense – permanently. In addition, I will have to repay any benefits received for which I was not eligible.

By signing the Rights and Responsibilities form, the Defendant certified that he read, understood, and accepted the rights and responsibilities, and that all of the information provided was true and correct.

APPLICABLE POLICY

West Virginia Department of Health and Human Resources Common Chapters Manual §740.11.D and the Code of Federal Regulations 7 CFR Section §273.16 establish that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts has committed an Intentional Program Violation (IPV). Committing 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.

The Code of Federal Regulations, found at 7 CFR §271.2, defines trafficking as the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via EBT cards, card numbers and personal identification numbers, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone.

The West Virginia Department of Health and Human Resources Common Chapters Manual §740.22.K, provides that the Hearing Official shall base the determination of Intentional Program Violation on clear and convincing evidence that demonstrates that the Defendant committed, and intended to commit, an Intentional Program Violation.

West Virginia Income Maintenance Manual §20.2.C.2 requires that once an IPV has been established, a disqualification period must be imposed on the AG member(s) who committed the violation.

West Virginia Income Maintenance Manual §9.1 sets forth the penalties for individuals found guilty of an IPV as follows: First Offense, twelve (12)-month disqualification; Second Offense, twenty-four (24)-month disqualification; Third Offense, permanent disqualification.

DISCUSSION

The regulations provide that a determination of an Intentional Program Violation is based on clear and convincing evidence that demonstrates the Defendant committed, and intended to commit, an Intentional Program Violation.

The Defendant acknowledged that he committed a SNAP Intentional Program Violation and indicated that he did not take the responsibilities of receiving SNAP benefits seriously. He indicated that [REDACTED] made it convenient and that he understands a 12-month penalty must be imposed.

The evidence submitted in this case clearly demonstrates that the Appellant participated in SNAP trafficking at [REDACTED]. As a result, a 12-month penalty must be imposed.

CONCLUSIONS OF LAW

- 1) The Code of Federal Regulations defines trafficking as the buying, selling, stealing, or otherwise affecting an exchange of SNAP benefits issued and accessed via EBT cards, card numbers and personal identification numbers, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone.
- 2) The evidence confirms, as acknowledged by the Defendant, that the Defendant made multiple unauthorized purchases with his SNAP benefits at [REDACTED] – a retailer permanently disqualified from participation in the SNAP due to a finding of SNAP trafficking.
- 3) There is clear and convincing evidence that the Defendant committed an Intentional Program Violation as defined in the SNAP policy and regulations.
- 4) Pursuant to SNAP policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first offense is 12 months. Only the Defendant is subject to this disqualification.

DECISION

The Department's proposal to apply a 12-month SNAP benefit disqualification is **upheld**. The Defendant will be disqualified from participation in the SNAP for 12 months beginning July 1, 2016.

ENTERED this ____ day of June 2016.

**Thomas E. Arnett
State Hearing Officer**