



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

July 5, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-1913

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Debra Carey, [REDACTED] County DHHR

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

██████████,

Defendant,

v.

Action Number: 16-BOR-1913

**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 May 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' Common Chapters Manual and Federal Regulations at 7 CFR §273.16. The hearing was convened on June 21, 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 Debra Carey, Repayment Investigator. The Defendant did not appear. The Movant's witness was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

M-1	Hearing Summary
M-2	Electronic Benefit Transfer (EBT) Transaction Detail for January 4, 2016, February 7, 2016, and February 11, 2016
M-3a	Surveillance Footage from ██████████ dated January 4, 2016, at 7:11 pm
M-3b	Surveillance Footage from ██████████ dated January 4, 2016, at 7:26 pm
M-3c	Surveillance Footage from ██████████ dated February 7, 2016, at 2:21:33 pm
M-3d	Surveillance Footage from ██████████ dated February 7, 2016, at 2:21:40 pm
M-3e	Surveillance Footage from ██████████ dated February 7, 2016, at 2:22 pm

M-3f Surveillance Footage from [REDACTED] dated February 7, 2016, at 2:22:27 pm
 M-3g Surveillance Footage from [REDACTED] dated February 7, 2016, at 2:22:30 pm
 M-3h Surveillance Footage from [REDACTED] dated February 7, 2016, at 2:22 pm
 M-3i Surveillance Footage from [REDACTED] dated February 11, 2016, at 3:15 pm
 M-4 Statement from [REDACTED] with the [REDACTED] County DHHR dated May 3, 2016
 M-5 Benefit Recovery Referral Screen Print
 M-6 Case Members History Screen Print
 M-7 Appointment Letter dated April 21, 2016
 M-8 Advance Notice of Administrative Disqualification Hearing Waiver dated May 3, 2016
 M-9 Waiver of Administrative Disqualification Hearing (unsigned)
 M-10 Rights and Responsibilities Form (blank copy)
 M-11 West Virginia Income Maintenance Manual §20
 M-12 Code of Federal Regulations, Title 7 §273.16
 M-13 SNAP Issuance History Disbursement Screen Print

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 by trafficking her SNAP benefits and requested that a SNAP penalty of twelve (12) months be imposed against her.
- 2) The Defendant was notified of the hearing by scheduling order mailed on May 19, 2016. The Defendant failed to appear for the hearing or provide good cause for her 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) A referral to the Department's Investigations and Fraud Management unit was made after the Defendant had requested numerous EBT card replacements indicating possible trafficking of benefits.
- 4) The Department submitted surveillance photographs (M-3a and M-3b) from [REDACTED] from January 4, 2016, showing that the purchase (M-2) made there at 2:22 pm was by an individual other than the Defendant. In the photograph, the Defendant is standing next to another woman, who is making the actual transaction with the Defendant's EBT card.
- 5) The Department submitted surveillance photographs (M-3c and M-3d) obtained from [REDACTED] for February 7, 2016. In these photographs, two unidentified males are making a purchase (M-2) with the Defendant's EBT card at 2:22 pm.

- 6) The Department submitted surveillance photographs (M-3i) from [REDACTED] taken on February 11, 2016. The photographs show a male making a purchase (M-2) at 3:15 pm using the Defendant's EBT card.
- 7) The Department contended that the Defendant trafficked her SNAP benefits by allowing unauthorized individuals, who were not in her SNAP Assistance Group (AG), to use her EBT card.

APPLICABLE POLICY

Code of Federal Regulations 7 CFR §273.16, establishes that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts, violating the Food Stamp Program, or any State statute for the purpose of acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system has committed an Intentional Program Violation (IPV).

Code of Federal Regulations 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 person identification numbers, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone.

West Virginia Income Maintenance Manual §20.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.

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 Department provided video surveillance footage documenting that on three (3) separate occasions, purchases were made with the Defendant's EBT card by unauthorized individuals who were not members of her SNAP assistance group. The Defendant's actions meet the definition of trafficking.

The Defendant did not appear for the hearing to refute the Department's allegations of trafficking.

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.
- 2) The evidence confirms the Defendant allowed unauthorized individuals access her SNAP benefits by using her EBT card.
- 3) 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.

DECISION

It is the finding of the State Hearing Officer that the Defendant has committed an Intentional Program Violation and will be disqualified from participation in the Supplemental Nutrition Assistance Program for 12 months, effective August 2016.

ENTERED this 5th day of July 2016

**Kristi Logan
State Hearing Officer**