



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

August 26, 2016



RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-2002

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,

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**

[REDACTED]

Defendant,

v.

Action Number: 16-BOR-2002

**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 [REDACTED], requested by the Movant on May 31, 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 July 6, 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:

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|-----|--|
| 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 history for the Defendant from May 7, 2015, through March 14, 2016 |
| D-3 | Screen print from the Movant's data system detailing a transaction made using the Defendant's SNAP access card on March 15, 2016; Screen prints of security camera photographs, stamped for time and date and transaction details from the SNAP vendor |
| 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 a background check for [REDACTED], with printed photographs
- D-6 Statement from the Defendant, dated May 11, 2016
- D-7 SNAP application document, electronically signed by the Defendant on December 18, 2014
- 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 a SNAP recipient with an access card listed in an “Active Card” status from February 27, 2016, through March 14, 2016. (Exhibit D-2)
- 3) The Defendant’s SNAP access card was used for a transaction on March 15, 2016. (Exhibit D-3)
- 4) The Defendant’s SNAP access card was also in an “Active Card” status on the date of the March 15, 2016 transaction. (Exhibit D-3)
- 5) The transaction detail screen print provided by the Movant (Exhibit D-3, p. 1 of 4) shows a “JPM Date/Time” as “03/15/2016 15:31:45” and “POS Date/Time” as “03/15/2016 15:31:47” for the transaction in question.
- 6) The Movant presented evidence gathered from the SNAP vendor for the transaction in question. (Exhibit D-3, pp. 2 – 4 of 4)
- 7) There was no witness from the SNAP vendor present for the hearing to explain the details of the evidence gathered from the SNAP vendor.
- 8) The evidence in question includes two printed photographs, stamped with dates and times of “3/15/2016 15:32:21” and “3/15/2016 15:33:12,” and appear to be of an adult male purchasing groceries. (Exhibit D-3, pp. 2 – 3 of 4)
- 9) Additional evidence from the SNAP vendor includes what appears to be a printout of three screen “captures” from the SNAP vendor’s data system, each with the heading “Electronic Journal Display Screen.” (Exhibit D-3, p.4 of 4)

- 10) The second of these screen captures from the SNAP vendor includes a statement that reads, “PAYMENT DECLINED – REASON 51.” (Exhibit D-3, p.4 of 4)
- 11) The Defendant signed a statement that reads, in part, “My mom used my card when she had my kids sometimes on the weekends, but she hasn’t used it since January 2016.” (Exhibit D-6)
- 12) The Defendant’s mother is not included in the Defendant’s SNAP case (Exhibit D-4) and is not an authorized user of her SNAP access card.
- 13) The Movant contended that the Defendant committed an Intentional Program Violation (IPV) of SNAP by allowing others to use her SNAP access card. The Movant requested this hearing for the purpose of making that determination.
- 14) The Defendant has no prior IPV offenses.

APPLICABLE POLICY

The Code of Federal Regulations, 7 CFR §273.16(c) defines an IPV as having “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).”

The West Virginia Income Maintenance Manual (WVIMM), Chapter 9.1.A.2.h, indicates a first offense IPV results in a one year disqualification from SNAP.

WVIMM, Chapter 1.4.T.3, details Electronic Benefits Transfer (EBT), and reads, “SNAP benefits are deposited into an EBT account and accessed by using the EBT card and a Personal Identification Number (PIN), similar to a personal debit or ATM card.”

WVIMM, Chapter 1.4.T.3.a, provides definitions and terminology associated with EBT and defines an authorized cardholder as “An individual, who, in addition to the payee, may be issued an EBT card and access an EBT account.”

WVIMM, Chapter 1.4.T.3.b(3), explains EBT card issuance to cases with an authorized cardholder, and reads, “The [assistance group] may designate an additional individual(s) as an authorized cardholder for EBT. The authorized cardholder has his own card and PIN and accesses the EBT account for the specified benefit(s) without restriction.”

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 Movant requested this ADH to determine if the Defendant committed an IPV and if so, to set the disqualification penalty for the offense. The Movant must show, by clear and convincing evidence, that the actions of the Defendant meet the codified IPV definition.

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

The Movant alleged that a transaction conducted using the Defendant's SNAP EBT card, or "access device," was not completed by the Defendant, thereby meeting the IPV definition as an act violating the proper use of SNAP access devices. The Movant presented evidence showing the Defendant's SNAP access card was active up to the date of the transaction in question, as well as evidence that the transaction itself was processed. However, the evidence the Movant gathered from the SNAP vendor – particularly without testimony from an individual from the SNAP vendor qualified to interpret that evidence – presented more questions than it answered. Conclusions simply cannot be drawn about this transaction from the vendor evidence provided.

However, the Movant also presented evidence that the Defendant admitted to allowing her mother to use her SNAP benefits. Regardless of the intended beneficiaries of the SNAP purchases described by the Defendant in her statement, this constitutes an IPV of the regulations for SNAP. The Defendant's mother was neither a payee nor an authorized cardholder for the Defendant's SNAP benefits. By allowing her mother to use and present her SNAP access device, the Defendant committed an intentional violation of SNAP. Policy requires a twelve month disqualification for a first-offense IPV.

CONCLUSION OF LAW

Because the action of the Defendant constitutes an IPV, the Movant must disqualify the Defendant from receipt of SNAP benefits, and because the IPV is a first offense the disqualification period is one year.

DECISION

It is the finding of the State Hearing Officer that the Defendant committed an Intentional Program Violation. The Defendant will be disqualified from receipt of SNAP benefits for a period of one year, beginning October 1, 2016.

ENTERED this ____ Day of August 2016.

Todd Thornton
State Hearing Officer