

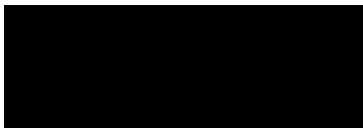


**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
203 East Third Avenue  
Williamson, WV 25661**

**Earl Ray Tomblin  
Governor**

**Karen L. Bowling  
Cabinet Secretary**

September 16, 2016



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-2249

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,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

Encl: Appellant'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-2249**

**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 June 6, 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 September 13, 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. 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 Declaration of Completeness of Record from the US Department of Agriculture (USDA), Food and Nutrition Service (FNS), Retailer Operations Division, dated March 9, 2016
- M-3 Letter from USDA FNS to ██████████, dated October 20, 2015, charging ██████████ with violating Supplemental Nutrition Assistance Program (SNAP) regulations
- M-4 USDA FNS General Store Information form dated September 5, 2015
- M-5 Letter from USDA FNS to ██████████, dated December 3, 2015, concluding that ██████████ violated SNAP regulations and permanently disqualifying ██████████ as a SNAP vendor

- M-6 Electronic Benefit Transfer (EBT) card Transaction History and Transaction Detail screens for Defendant, detailing purchases made from April 10 to June 16, 2015
- M-7 EBT card Transaction History and Transaction Detail screens for Defendant, detailing purchases made from August 18 to October 9, 2015
- M-8 SNAP Telephone Review Form, dated December 15, 2014
- M-9 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 July 6, 2016

#### **Defendant's Exhibits**

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 trafficked in SNAP benefits.
- 2) The US Department of Agriculture – Food and Nutrition Services (USDA-FNS), which has oversight of SNAP, notified the WV DHHR that the USDA-FNS had disqualified [REDACTED] from being a SNAP vendor because the business had engaged in the trafficking of SNAP benefits (Exhibit M-5).
- 3) [REDACTED] is a small convenience store, approximately 900 square feet in size, which sells ice, beer and soda, and a few incidental-need items like bread and milk. [REDACTED] only has a limited number of items such as fresh meats, which would correspond to legitimate large-amount purchases.
- 4) The USDA-FNS provided a compilation of EBT card numbers and transactions (Exhibit M-3) identified as indicative of SNAP benefit trafficking in that they were unusually large for the size of this retail establishment, they indicated multiple transactions in short amount of time, or they showed an exhaustion of the card-holder's SNAP benefits in an unusually short amount of time. Neither the Defendant's current EBT card number or past card numbers were included on this list of card transactions.
- 5) According to the Defendant's Electronic Benefits Transfer (EBT) card transaction history (Exhibit M-6), he made an EBT card balance inquiry at the [REDACTED] on May 19, 2015, at 2:45 PM, and spent the full amount of his SNAP benefits on the card, \$25.71, at 2:46 PM.

- 6) According to the Defendant's Electronic Benefits Transfer (EBT) card transaction history (Exhibit M-7), he made an EBT card balance inquiry at the [REDACTED] on September 17, 2015, at 4:29 PM, and spent \$12 out of the \$12.15 remaining in his account at 4:29 PM.

### **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.

### **DISCUSSION**

The US Department of Agriculture – Food and Nutrition Services (USDA-FNS) identified a retail grocery store, the [REDACTED], as a business that participated in SNAP trafficking. The USDA-FNS provided a list of EBT card numbers and transactions (Exhibit M-3) it identified as purchases which indicate SNAP benefit trafficking. However, the Defendant's EBT card number was not included in this list.

The Department's representative testified that the two purchases the Defendant made on May 19 and September 17, 2015, indicate the Defendant used his EBT card to pay for purchases made on credit. He testified that this is indicated by the fact that the Defendant made balance inquiries immediately before each transaction.

However, it is possible that the Defendant made the balance inquiries merely to check the amount of SNAP benefits available to him before he made the purchases. The Department did not provide clear and convincing evidence that the Defendant had trafficked in his SNAP benefits in May and September 2015.

### **CONCLUSIONS OF LAW**

Pursuant to the Code of Federal Regulations 7 CFR §273.16, the Department did not provide clear and convincing evidence that the Defendant trafficked in SNAP benefits. No disqualification penalty will be imposed.

### **DECISION**

It is the ruling of the Hearing Officer that the Defendant did not commit an Intentional Program Violation. He will not be disqualified from participating in SNAP.

**ENTERED this 16<sup>th</sup> Day of September 2016.**

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**Stephen M. Baisden**  
**State Hearing Officer**