



**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 22, 2016



RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2258

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

cc: Cassandra Burns, Criminal Investigator

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

████████████████████,

Defendant,

v.

Action Number: 16-BOR-2258

**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 July 8, 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 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 Cassandra Burns, Criminal 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 United States Department of Agriculture Food and Nutrition Services (USDA-FNS) investigation materials and sanction determination for ██████████, dated December 3, 2015
- M-3 Electronic Benefits Transfer (EBT) Card Transaction History for Defendant, listing purchases made from February 6, 2014 through November 9, 2015
- M-4 Rights and Responsibilities form, signed and dated by Defendant on March 31, 2014
- M-5 West Virginia Income Maintenance Manual (WV IMM) Chapter 20, §20.2
- M-6 Copy of IG-IFM-ADH-waiver, Waiver of Administrative Disqualification Hearing form, and IG-IFM-ADH-Ltr, Advance Notice of Administrative Disqualification Hearing notice, sent to Defendant on June 30, 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 his 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 trafficked in SNAP benefits (Exhibit M-2, page 26).
- 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] sells items such as fresh meats, fruits and vegetables.
- 4) From April 2014 to November 2015, the Defendant made 52 purchases at [REDACTED], spending \$1797.86 in SNAP benefits (Exhibit M-3). The Department's representative stated that large-amount purchases at such a small store and the many even-dollar purchases identify the Appellant's spending pattern as indicative of SNAP trafficking.
- 5) The Defendant did not appear at the hearing to refute the SNAP trafficking allegations.

APPLICABLE POLICY

WV IMM Chapter 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 access device.

DISCUSSION

[REDACTED] is a small rural convenience store that sells a variety of items, including canned foods, beer, soda, ice, dairy products, breads and other incidental-need products. The

store does sell fresh meats, fruits and vegetables, but the photographs included in the documents from the USDA-FNS (Exhibit M-2) show only a limited amount of them displayed for sale.

The Department's representative testified that due to the size of the store and the limited quantity of the items for sale, it would be hard to make a large-amount food purchase at this location. From April 2014 to November 2015, the Defendant made four purchases for more than \$100. Two of these purchases, both made about an hour apart on February 5, 2015, were for \$146.50 and \$147.50.

The Department's representative also pointed to the large number of even-dollar purchases the Defendant made as indicative of trafficking. Of the 52 purchases from [REDACTED] from April 2014 to November 2015, 23 of them, or 44%, were for even-dollar amounts. Occasionally, a person may purchase items from a retail establishment and the price will total an even-dollar amount, but not as frequently as is demonstrated in the Defendant's purchase record.

The Defendant did not appear at the hearing to refute the allegation that he trafficked in SNAP benefits at [REDACTED]. Therefore, in the absence of any evidence or testimony to the contrary, the Department proved clear and convincing evidence that the Defendant committed an Intentional Program Violation (IPV) by trafficking in SNAP benefits.

CONCLUSIONS OF LAW

- 1) Pursuant to the Code of Federal Regulations 7 CFR §273.16, the Department established that the Defendant trafficked in SNAP benefits at a small convenience store in rural [REDACTED] County, WV, which had been identified by the USDA-FNS as a retail business that had engaged in this activity. The Defendant committed an Intentional Program Violation by doing this.
- 2) The Department must impose a disqualification penalty. The disqualification penalty for a first offense is one year.

DECISION

It is the ruling of the Hearing Officer that the Defendant committed an Intentional Program Violation. He will be disqualified from participating in SNAP for one year, beginning November 1, 2016.

ENTERED this 22nd Day of September 2016.

Stephen M. Baisden
State Hearing Officer