

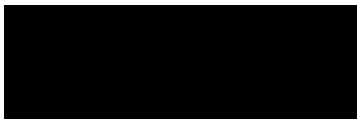


**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
203 East Third Avenue  
Williamson, WV 25661**

**Earl Ray Tomblin  
Governor**

**Karen L. Bowling  
Cabinet Secretary**

September 23, 2016



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-2261

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-2261**

**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.

On September 22, 2016, it was discovered that the assigned Hearing Official had a business relationship with the Defendant. On September 23, 2016, a hearing was conducted and the parties were notified of the existing relationship. They were given the opportunity to object to the Hearing Official rendering a decision on the matter. Neither the Department's representative nor the Defendant objected to the Hearing Official rendering a decision.

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 appeared *pro se*. 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 March 11, 2014 through October 23, 2015
- M-4 Written statement from Appellant's ex-wife, dated June 8, 2016

- M-5 SNAP Mail-in application form, signed and dated by Defendant on September 17, 2015
- M-6 West Virginia Income Maintenance Manual (WV IMM) Chapter 20, §20.2
- M-7 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 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'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, in limited numbers and amounts.
- 4) From June 2 through October 23, 2015, the Defendant made 16 purchases at [REDACTED] spending \$262.56 in SNAP benefits (Exhibit M-3). The Department's representative stated that the many even-dollar purchases made at the [REDACTED] identify the Appellant's spending pattern as indicative of SNAP trafficking.
- 5) The Defendant appeared at the hearing to refute the SNAP trafficking allegations. He testified that he did not engage in any improper use of his SNAP benefits.

**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 §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

██████████ 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 the Defendant violated the Code of Federal Regulations 7 CFR §273.16 as stated above, in that he was engaged in the trafficking of his SNAP benefits. She testified that the large number of even-dollar purchases the Defendant made at the ██████████ (Exhibit M-3) indicates he trafficked in SNAP benefits. Of the 16 purchases from ██████████ from March 2014 to October 2015, 7 of them were for even-dollar amounts. She argued that 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 Department's representative submitted into evidence a written statement given by the Defendant's ex-wife, dated June 8, 2016 (Exhibit M-4). This statement reads as follows in part:

I moved to ██████████ in May 2015. I really haven't used my card since May of last year . . . [In] Oct. 2015 I decided to get a divorce . . . We didn't separate until Oct. 2015 . . . I was sending money to my husband and son once I got my job in ██████████ in June 2015. I have never used my card at ██████████ . . . [The Defendant] would go in to [██████████] all the time, even though bad things were going on there . . . I caught my husband at the store actively using drugs. I was asked to stay away from the place after I showed my ass [created a disturbance].

The Defendant testified that he did not traffic in SNAP benefits at ██████████. He testified that there are many items for sale at the ██████████ that are priced at even-dollar amounts. He testified that even though the prices at ██████████ are higher than at larger supermarkets, the cost of driving to these supermarkets negates any potential savings.

The statement from the Defendant's ex-wife (Exhibit M-4) must be viewed with a certain amount of skepticism, given the fact that she and the Defendant divorced. Therefore, statements she made alleging drug use on the part of the Defendant will be disregarded, especially because this decision does not concern itself with drug activity.

However, the ex-wife's statement does correlate with the EBT card transaction history (Exhibit M-3). The transaction history lists card usage from March 11, 2014 through October 23, 2015, but it does not list any purchases at [REDACTED] between March 11, 2014 and June 1, 2015. The card was used at [REDACTED] beginning on June 2, 2015, just after the ex-wife moved away from the [REDACTED] area.

The Defendant used the EBT card 16 times from June 2 through October 23, 2015. Out of these 16 purchases, seven of them were for even-dollar amounts. The Defendant argued that the [REDACTED] sold many even-dollar items; however, two purchases, one made on September 2, 2015 for \$50 and the other made on September 3, 2015 for \$69 (Exhibit M-3, pages 28 and 29) contradict this argument. The large amounts of these purchases, \$50 and \$69, in combination with the five other even-dollar purchases for smaller amounts, provide compelling evidence of SNAP trafficking.

The Department has provided clear and convincing evidence and testimony that the Defendant engaged in SNAP trafficking at [REDACTED]

### **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 23<sup>rd</sup> Day of September 2016.**

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**Stephen M. Baisden  
State Hearing Officer**