



**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**

October 31, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2332

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-2332

**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 September 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' (WV DHHR) Common Chapters Manual and Federal Regulations at 7 CFR Section 273.16. The hearing was convened on October 20, 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. The participant was sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations 7 CFR Section 273.16
- M-2 Defendant's photograph detail from WV Driver's License and Defendant's photograph from Facebook
- M-3 Electronic Benefits Transfer (EBT) Card Transaction Detail for Defendant, describing a purchase made on July 1, 2016, for \$174.78, at the ██████████
██████████
- M-4 Purchase receipt from the ██████████ in the amount of \$174.78
- M-5 Series of four photographs taken from the ██████████ security cameras at various locations inside and outside the store
- M-6 SNAP benefit application form, signed by Defendant on October 28, 2015
- M-7 West Virginia Income Maintenance Manual (WV IMM) Chapter 20, §20.2

M-8 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 August 22, 2016

Defendant's Exhibits

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence during 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 intentionally allowed another person to access his SNAP benefits by using his access device, an Electronic Benefits Transfer (EBT) card.
- 2) The Defendant's SNAP usage record reflected that since November 2012, the Defendant reported his EBT card as lost or stolen seven or more times.
- 3) On July 1, 2016, the Defendant's EBT card was used at the [REDACTED] to make a purchase in the amount of \$174.78 from the point of sale identified by that business as its "terminal 11" (Exhibit M-3).
- 4) The Department's representative, a SNAP repayment investigator, watched a videotape of the \$174.78 purchase taken from [REDACTED] security cameras at "terminal 11". He determined the Defendant did not make the purchase.
- 5) The Defendant did not appear at the hearing to refute the allegation that he allowed others to use his EBT card on July 1, 2016, in order to make a \$174.78 purchase.

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.

Title 7 of the Federal Regulations, §271.2 (Definitions), January 22, 2016 update, defines SNAP trafficking as: 1. The buying, selling, stealing or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone; 2. The exchange of firearms, ammunition, explosives or controlled substances, as defined in §802 of title 21, United States Code, for SNAP benefits; 3. Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount; 4. Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; 5. Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; 6. Attempting to buy, sell, steal or otherwise effect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion others, or acting alone.

DISCUSSION

The Department's representative testified that he investigated the Defendant's SNAP usage because the Defendant had reported his EBT card as stolen at least seven times since 2012. He requested the Administrative Disqualification Hearing based on a report that the Defendant had allowed another person to use his EBT card to make a purchase in the amount of \$174.78 at the [REDACTED].

The Department's representative submitted as evidence two photographs of the Defendant, taken from his WV Driver's License and from his Facebook internet site (Exhibit M-2). He submitted a series of four still photographs made from [REDACTED] security cameras at the day and time of the purchase (Exhibit M-5).

The purchase was made at a point of sale identified by the store as "terminal 11," on July 1, 2016, at 4:50 PM, according to the Defendant's EBT Transaction Detail (Exhibit M-3). The Department's representative submitted photographs (Exhibit M-5) taken at "terminal 11" on July 1, 2016, at 4:50 PM, and at other locations inside the store and in the parking lot. The photograph specifically from "terminal 11" is taken from overhead, so one may not see the face of the person making the purchase. However, the photographs showing an individual walking into and out of the store bear no resemblance to the person on the driver's license and Facebook photographs (Exhibit M-2).

The Department's representative testified that [REDACTED] would not give him copies of the actual videotapes without a subpoena. He testified that he and the store's loss-prevention officer watched the full videotapes, from the time the individual who made the purchase exited his vehicle, through his shopping and purchase-making, until he exited the store. He added that the still photographs were taken from the videotapes he and the officer watched together.

There is no direct evidence that the Defendant actually obtained money by allowing someone else to use his EBT card. However, if the Defendant's EBT card had been stolen by or lost and found by the person who made the July 1 purchase, this person would not have the personal identification number (PIN) which would allow him to access SNAP benefits in the Defendant's account. According to the January 22, 2016 update to Federal Regulations 7 CFR Section 271.2, SNAP trafficking occurs in the act of "attempting to buy, sell, steal or otherwise effect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs) . . ."

The Department asserted that the Defendant allowed another person to access his SNAP benefits. The Defendant did not appear at the hearing to refute the Department's assertion. Therefore, in the absence of any evidence or testimony to the contrary, the Department proved by 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 and 7 CFR §271.2, the Department provided clear and convincing evidence that the Defendant trafficked his SNAP benefits by allowing another person to purchase food with his EBT card, thus committing an Intentional Program Violation.
- 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 December 1, 2016.

ENTERED this 31st Day of October 2016.

**Stephen M. Baisden
State Hearing Officer**