



**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 27, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2364

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: Ellis Bryson, Criminal Investigator

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

██████████,

Defendant,

v.

Action Number: 16-BOR-2364

**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' Common Chapters Manual and Federal Regulations at 7 CFR §273.16. The hearing was convened on September 21, 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 Ellis Bryson, Criminal Investigator. The Defendant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All participants were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 SNAP mail-in Six-Month Contact Form, signed by Defendant on January 7, 2016
- M-2 SNAP mail-in Six-Month Contact Form, signed by Defendant on May 25, 2016
- M-3 United States Department of Agriculture Food and Nutrition Services (USDA-FNS) investigation materials for ██████████ dated September 5, 2015
- M-4 USDA-FNS Sanction Determination for ██████████, dated December 3, 2015
- M-5 Electronic Benefits Transfer (EBT) Card Transaction History for ██████████
██████████ listing all EBT Card purchases made from April 5 through August 4, 2014
- M-6 USDA-FNS Notification of Sanction Investigation for ██████████, dated October 20, 2015

- M-7 USDA-FNS list of EBT excessively large purchases made at [REDACTED] from March 3 to August 23, 2015
- M-8 Partial list of questionable purchases from [REDACTED], listing purchases from June and August, 2015
- M-9 Electronic Benefits Transfer (EBT) Card Transaction History for Defendant, listing purchases made from August 3 to September 10, 2015
- M-10 Electronic Benefits Transfer (EBT) Card Transaction Detail for Defendant, describing a purchase made on August 3, 2015, for \$90.69, at [REDACTED]
- M-11 Electronic Benefits Transfer (EBT) Card Transaction Detail for Defendant, describing a purchase made on August 3, 2015, for \$37.85, at [REDACTED]
- M-12 Electronic Benefits Transfer (EBT) Card Transaction Detail for Defendant, describing a purchase made on August 4, 2015, for \$90.69, at [REDACTED]
- M-13 Administrative Disqualification Hearing interview appointment letter, sent to Defendant on May 19, 2016
- M-14 Advance Notice of Administrative Disqualification Hearing Waiver, sent to Defendant on June 6, 2016
- M-15 Investigations and Fraud Management Statement of Advise and Consent, signed by Defendant on June 7, 2016
- M-16 West Virginia Income Maintenance Manual (WV IMM) Chapter 9, §9.1.A.2.h
- M-17 Code of Federal Regulations §273.16

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-4).
- 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 August 3 through September 10, 2015, the Defendant made five purchases at [REDACTED], spending \$245.22 in SNAP benefits (Exhibit M-9). The Department's representative stated that the USDA-FNS identified the Appellant's purchases made at the [REDACTED] as 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 9, §9.1.A.2.h reads, "Persons who have been found guilty of an Intentional Program Violation are disqualified [from receiving SNAP benefits] as follows: First Offense – one year; Second Offense – two years; Third Offense – permanent.

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

[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-3) 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. He testified that the USDA-FNS identified the Defendant's purchasing patterns as indicative of SNAP trafficking.

The Defendant testified that he did not traffic in SNAP benefits at [REDACTED]. His witness testified that he had a birthday party for his son in August 2015 and he made large-amount purchases at that time to pay for food and drinks for his son's party. His witness also testified that he does not own a vehicle, so he is forced to spend a large portion of his monthly SNAP allotment at retail stores which are within walking distance of his home, including [REDACTED].

The Defendant used the EBT card five times from August 3 through September 10, 2015. These purchases are as follows: August 3, 3:43 PM, \$90.69; August 3, 5:45 PM, \$11.99; August 3, 8:14 PM, \$37.85; August 4, 11:28 AM, \$90.69; September 10, 10:44 AM, \$14. (Exhibit M-9). The

Department's representative did not provide testimony to indicate how these purchases demonstrate a pattern of SNAP trafficking. The Defendant only made five purchases at [REDACTED] [REDACTED] throughout the period of time encompassed by the USDA-FNS investigation, so it would be difficult to identify any pattern in such a small number of purchases.

However, two of these purchases do indicate suspicious spending activity. On August 3 and August 4, 2015, the Defendant made large-amount purchases for the same amounts, \$90.69 each day. It is beyond mere coincidence that the Defendant would spend the exact same amount on each of two successive days at a business that the USDA-FNS has identified as one that engaged in SNAP trafficking. Also, the Defendant and his witness did not provide any explanation for making two large-dollar purchases for the exact same amount on two successive days.

The Department has provided clear and convincing evidence and testimony that the Defendant trafficked his SNAP benefits 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] [REDACTED], 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 27th Day of September 2016.

**Stephen M. Baisden
State Hearing Officer**