



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

December 16, 2016

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-2727

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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: Christina Saunders, Department Representative

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

████████████████████,

**Defendant,**

v.

**Action Number: 16-BOR-2727**

**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 26, 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 November 29, 2016.

The matter before the Hearing Officer arises from a request by the Movant 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 12 months.

At the hearing, the Movant appeared by Christina Saunders. The Defendant was notified of the hearing but failed to appear, resulting in the hearing being held in the Defendant's absence. All witnesses were sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- |     |  |
|-----|--|
| D-1 | Screen prints detailing the Defendant's SNAP card history  |
| D-2 | Screen prints detailing the Defendant's SNAP transaction history   |
| D-3 | Screen prints providing transaction details for the Defendant's SNAP card usage on April 5, 2016; Screen prints of security camera footage from the vendor for April 5, 2016 |

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 Defendant was a recipient of SNAP benefits for at least the months of December 2015 through August 2016. (Exhibit D-1)
- 2) The Movant initiated an investigation of the Defendant's SNAP usage based on a report identifying multiple replacements of Electronic Benefit Transfer (EBT) – or SNAP access – card.
- 3) The Defendant's SNAP access card was used for two transactions on April 5, 2016. (Exhibit D-3)
- 4) The Movant presented screen prints of images taken from security camera footage provided by the SNAP vendor near the times of the two April 5, 2016 SNAP transactions on the Defendant's SNAP access card.
- 5) The Defendant did not appear for the hearing and the Movant did not provide a photograph of the Defendant as evidence.
- 6) The Movant contended that the Defendant committed an Intentional Program Violation (IPV) of SNAP by allowing others to use her SNAP access card. The Movant requested this hearing for the purpose of making that determination.

### **APPLICABLE POLICY**

The Code of Federal Regulations, 7 CFR §273.16(c) defines an IPV as having “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**

The Movant requested this ADH to determine if the Defendant committed an IPV and if so, to set the disqualification penalty for the offense. The Movant must show, by clear and convincing evidence, that the actions of the Defendant meet the codified IPV definition. The Defendant did not appear for the hearing, and as such could not dispute facts presented by the Movant.

The Movant failed to meet its burden in establishing an IPV by the Defendant for two reasons: the failure to establish a link between the transaction times as recorded by the EBT system and

the times apparently stamped by the SNAP vendor's security camera onto the still footage and the failure to establish that the person in this still footage is not the Defendant.

It is unclear that there is any time synchronization between the EBT system and the SNAP vendor's security camera. If the two systems are synchronized with regard to time, it is further unclear which times listed on these documents to reference. There are multiple times listed on the documents from the SNAP vendor, but none of them match the transaction times noted in the EBT system. The lack of expert testimony in this area left this issue unresolved.

The Movant did not establish that the individual or individuals in the security camera footage from the SNAP vendor was anyone other than the Defendant. The Movant may have intended to submit evidence including a printed photograph of the Defendant as reference, but the Board of Review limits the evidence submission in Administrative Disqualification Hearings to the evidence outlined on a document accompanying the scheduling order to the Defendant. There are two apparent customers near the register in the footage associated with the first transaction and four apparent customers near the register in the second transaction. Given the inconsistency in times provided by the EBT system and the SNAP vendor it is unclear that the person appearing to conduct a transaction was the one the Movant contends, and not just the next person in line. At least one of these individuals appears to be female, but this or any assumption regarding apparent gender does not rise to the level of clear and convincing evidence.

### **CONCLUSION OF LAW**

Because the Movant failed to provide clear and convincing testimony and evidence that the Defendant committed an act that meets the codified IPV definition, the Movant must not apply the corresponding SNAP disqualification penalty.

### **DECISION**

It is the finding of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation.

**ENTERED this \_\_\_\_ Day of December 2016.**

---

**Todd Thornton  
State Hearing Officer**