



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 30, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2852

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Brian Shreve, [REDACTED] County DHHR

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

████████████████████,

Defendant,

v.

Action Number: 16-BOR-2852

**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 October 14, 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 Department for a determination as to whether the Defendant has committed an Intentional Program Violation and should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 24 months.

At the hearing, the Department appeared by Brian Shreve, Repayment Investigator. The Defendant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations Title 7 §273.16
- M-2 Declaration of Completeness of Record by United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) for ██████████ dated May 13, 2016
- M-3 FNS Survey Form for ██████████ dated December 22, 2015
- M-4 Photographs of ██████████
- M-5 Notice of Suspected Trafficking to ██████████ dated February 17, 2016 and a Printout of Electronic Benefit Transfer (EBT) Transactions

- M-6 EBT Transaction Detail for October 12, 2015
- M-7 EBT Transaction Detail for October 5, 2015
- M-8 EBT Transaction Detail for December 4, 2015
- M-9 Advance Notice of Administrative Disqualification Hearing dated September 19, 2016, and Waiver of Administrative Disqualification Hearing signed September 28, 2016
- M-10 Rights and Responsibilities Form dated February 12, 2007

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 alleged that the Defendant committed an Intentional Program Violation by trafficking her SNAP benefits and requested that a SNAP penalty of twenty-four (24) months be imposed against her.
- 2) [REDACTED] was disqualified (M-5) by the United States Department of Agriculture Food and Nutrition Service (USDA-FNS) division for trafficking SNAP benefits in April 2016. The Defendant was implicated (M-5) as trafficking her SNAP benefits with [REDACTED] based on a pattern of purchases made with her Electronic Benefit Transfer (EBT) card.
- 3) [REDACTED] (M-3) is a rural, 1800 square-foot convenience store which carries a limited amount of fresh meats, dairy items, breads, snacks, frozen foods, and various sundries. [REDACTED] did not provide shopping carts or baskets for customer use, and photographs (M-4) taken of the store's inventory showed some empty shelving.
- 4) The Movant contended that the Defendant had multiple purchases (M-5) deemed to be excessively large for the type and size of [REDACTED] and alleged that the Defendant was trafficking her SNAP benefits with the store, either purchasing non-food items or "running a tab" at the store, and paying this account off with her SNAP benefits.
- 5) The Defendant made a total of three (3) three transactions (M-6) with [REDACTED] [REDACTED] October 5, 2015 in the amount of \$111.78, October 12, 2015 in the amount of \$115.70 and December 4, 2015 in the amount of \$104.92.

APPLICABLE POLICY

Code of Federal Regulations 7 CFR §273.16, establishes that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts, violating the Food

Stamp Program, or any State statute for the purpose of acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system has committed an Intentional Program Violation (IPV).

Code of Federal Regulations Title 7 §271.2 defines trafficking as the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via EBT cards, card numbers and personal identification numbers, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others or acting alone.

West Virginia Income Maintenance Manual §20.C.2 defines an IPV and establishes that IPV's include: making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. Once an IPV has been established, a disqualification period must be imposed on the Assistance Group (AG) member who committed the violation. Furthermore, IPV claims must be established for trafficking-related offenses. Claims arising from trafficking-related offenses are the value of the trafficking benefits as determined by the individual's admission, adjudication, or documentation that forms the basis of the trafficking determination.

West Virginia Income Maintenance Manual §9.1 sets forth the penalties for individuals found guilty of an IPV as follows: First Offense, twelve (12) month disqualification; Second Offense, twenty-four (24) month disqualification; Third Offense, permanent disqualification.

DISCUSSION

Federal regulations define trafficking as the exchange of SNAP benefits accessed through an EBT card for cash or consideration other than eligible food. An Intentional Program Violation occurs when an individual is found to have trafficked their SNAP benefits.

The Defendant made three (3) purchases with her EBT card at [REDACTED] in excess of \$100 each. The Movant contended that with a limited supply of eligible food items available for sale at [REDACTED] and the lack of shopping carts to assist a customer with large purchases, that the Defendant was either paying of a tab with her EBT card or purchasing non-food items.

The Defendant testified that during the period in question, she had separated from her husband and was temporarily staying in a camper close to [REDACTED]. The Defendant contended that she purchased only food items with which to stock the camper at [REDACTED], and denied any wrong doing. The Defendant only shopped at [REDACTED] on three (3) occasions, and has since moved from that area.

It is not impossible to spend \$100 at a small convenience store such as [REDACTED] based on the food items available for sale, also taking into consideration that rural convenience stores typically have higher price on items for sale. The evidence submitted by the Movant did not establish a questionable pattern of EBT usage for the Defendant or establish that the Defendant made purchases at the store other than for eligible food items with her SNAP benefits.

CONCLUSIONS OF LAW

- 1) The burden of proof rested with the Movant to establish that the Defendant trafficked her SNAP benefits at [REDACTED], thereby committing an Intentional Program Violation.
- 2) Based on the information submitted, the Movant failed to establish through clear and convincing evidence that the Defendant trafficked her SNAP benefits.

DECISION

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

ENTERED this 30th day of November 2016

Kristi Logan
State Hearing Officer