



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

December 6, 2016

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-2854

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-2854**

**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 12 months.

At the hearing, the Movant 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 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 Printout of Electronic Benefit Transfer (EBT) Transactions

- M-6 EBT Transaction Detail for December 4, 2015
- M-7 EBT Transaction Detail for August 5, 2015
- M-8 Advance Notice of Administrative Disqualification Hearing dated September 19, 2016, and Waiver of Administrative Disqualification Hearing signed September 27, 2016
- M-9 SNAP Review Form dated May 30, 2014

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 Movant alleged that the Defendant committed an Intentional Program Violation by trafficking her SNAP benefits and requested that a SNAP penalty of twelve (12) 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, 1,800 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 transactions made with the Defendant's EBT card (M-5) that were flagged as unusual were on August 5, 2015, in the amount of \$43.30 and on December 4, 2015, in the amount of \$112.34.

### **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 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 his or her SNAP benefits.

The Defendant made one (1) purchase with her EBT card at [REDACTED] in excess of \$100, and one (1) purchase of less than \$50. 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 off a tab with her EBT card or purchasing non-food items. The Movant noted that the Defendant's total purchases made with her EBT card at [REDACTED] totaled \$2,096.92, but did not provide documentation of the amounts or dates of these transactions.

The Defendant testified that she shopped at [REDACTED] because it was close to her home and she could walk to the store. The Defendant stated the prices were high, and often varied but that it was convenient for her. The Defendant denied any misuse of her EBT card.

Only one (1) of the purchases made by the Defendant at [REDACTED] could be considered unusually large for the size and stock available at the store, however; when taking into consideration that rural convenience stores typically have higher prices on items for sale, one purchase in excess of \$100 is not indicative of trafficking. 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 6<sup>th</sup> day of December 2016**

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**Kristi Logan**  
**State Hearing Officer**