



**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**

December 22, 2016

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2917

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-2917

**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 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' (WV DHHR) Common Chapters Manual and Federal Regulations at 7 CFR Section 273.16. The hearing was convened on December 7, 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 appeared *pro se*. The participants were 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 Copy of EBT card purportedly belonging to Defendant, along with receipt from WV DHHR dated October 11, 2016
- M-3 Written statement from ██████████ dated October 11, 2016
- M-4 Electronic Benefits Transfer (EBT) Card History, listing EBT card replacement requests made by the Defendant from May 1, 2015 to October 22, 2016
- M-5 EBT Card Transaction History for Defendant, listing purchases made from October 4 through October 14, 2016
- M-6 SNAP benefit review form (CSLE), signed by Defendant on February 18, 2014
- 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 October 18, 2016

Defendant's Exhibits

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 she intentionally sold another person her Electronic Benefits Transfer (EBT) card.
- 2) On October 11, 2016, an individual named [REDACTED] appeared at the WV DHHR, [REDACTED] County office, and reported that the Defendant sold him her EBT card with "\$180 and change" on it for \$50. He gave a statement (Exhibit M-3) to the Department's representative describing this transaction.
- 3) On October 11, 2016, [REDACTED] had in his possession the Defendant's EBT card, which he submitted to a financial clerk at the [REDACTED] County DHHR office (Exhibit M-2). The financial clerk gave [REDACTED] a receipt for the card and then destroyed it.
- 4) On October 6, 2016, the Defendant's EBT account balance was \$180.81 (Exhibit M-5). On October 7, 2016, the Defendant reported that her EBT card was lost and requested a replacement (Exhibit M-4).

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 a certain [REDACTED] had reported the Defendant sold him her EBT card for \$50. He testified that on October 11, 2016, [REDACTED] came to the WV DHHR, [REDACTED] County office, and gave him a statement (Exhibit M-3), which reads as follows:

[The Defendant] and either her boyfriend or husband, I am not sure, came to my home. She said you want to buy these food stamps, will you give me \$50. She then called a number, put in the same number, then it gave me a balance of \$180 and some odd cents. I gave her two \$20s and a \$10. Then she gave me the card. Then I told her was going to take it to somebody that would take care of it. Then she try [*sic*] to give my money back, but I told her she was taken [*sic*] food from her kids. This occurred on Thursday I believe. I gave the card with number [card number redacted] to [Department's representative].

The Department's representative submitted as evidence a copy of the card [REDACTED] submitted on October 11, 2016, along with a receipt for the card given to [REDACTED] by a [REDACTED] County office financial clerk (Exhibit M-2).

The Department's representative submitted as evidence a copy of the Defendant's EBT account transaction history (Exhibit M-5). This history indicates that after a purchase made with the Defendant's EBT card on October 6, 2016, her EBT account had \$180.81 in it. He also submitted a copy of the Defendant's EBT card history (Exhibit M-4), indicating the Defendant reported her card as lost and requested a replacement on October 7, 2016.

The Defendant testified that she did not know [REDACTED] and had never met him. Subsequently, the Defendant learned that [REDACTED] was a friend of someone with whom she had a dispute. When she discovered her EBT card was missing, she discovered that this former friend had possession of it. She added that she did not file a criminal complaint against this person because she did not feel [REDACTED] County police would have taken any action regarding her complaint.

The written statement from [REDACTED] is difficult to believe. It is unlikely in the extreme that [REDACTED] would spend \$50 to buy the Defendant's EBT card, just so he could teach her a lesson in the ethical use of public assistance benefits.

The testimony from the Defendant is similarly implausible. If [REDACTED] girlfriend and her sister stole the card to use the EBT benefits it contained, the card would be useless for that purpose without the Personal Identification Number (PIN). If they stole the card just to submit it to the DHHR as part of some nebulous revenge plot, they could not have known that the card had "\$180 and some odd cents" on it.

The EBT card was in the possession of [REDACTED] on October 11, 2016, and he knew the amount of SNAP benefits in the Defendant's EBT account. He could not have known this unless the Defendant had willingly participated in transferring the card to him. 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 her SNAP benefits by selling or attempting to sell another person her 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. She will be disqualified from participating in SNAP for one year, beginning February 1, 2017.

ENTERED this 22nd Day of December 2016.

**Stephen M. Baisden
State Hearing Officer**