



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Jim Justice
Governor**

**BOARD OF REVIEW
416 Adams St.
Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326**

**Bill J. Crouch
Cabinet Secretary**

August 4, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-1951

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Claimant's Recourse to Hearing Decision
Form IG-BR-29
cc: Christina Saunders

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

██████████,

Appellant,

v.

ACTION NO.: 17-BOR-1951

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. 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. This fair hearing was convened on July 19, 2017 and reconvened on August 3, 2017, on an appeal filed June 1, 2017.

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 should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for twelve (12) months.

At the hearing, the Respondent appeared by Christina Saunders, Repayment Investigator. The Defendant appeared *pro se*. The Defendant testified on his own behalf. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Movant's Exhibits:

- M-1 Investigation appointment letter, dated March 22, 2017
- M-2 Statement from the Defendant, dated June 1, 2017
- M-3 Advanced Notice of Administrative Disqualification Hearing Waiver, dated May 22, 2017
- M-4 Waiver of Administrative Disqualification Hearing, dated June 1, 2017
- M-5 Electronic Disqualification Recipient System query page

- M-6 United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) Notice of Charges, dated January 11, 2017;
- M-7 Printout of Electronic Benefit Transaction (EBT) history for [REDACTED]; photographs; and Declaration of Completeness of Record, dated March 7, 2017
- M-8 USDA-FNS Notice of Disqualification, dated February 15, 2017; EBT transaction printout
- M-9 Printout of Defendant's EBT transaction history at [REDACTED], dated August 18, 2014 through February 9, 2017
- M-10 SNAP Application, dated June 4, 2013
- M-11 SNAP review documents, dated October 13, 2015; Rights and Responsibilities
- M-12 WV Income Maintenance Manual (WVIMM) §20.2
- M-13 Code of Federal Regulations – 7 CFR §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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Defendant was a recipient of SNAP benefits through the period of August 2014 through January 2017. (Exhibit M-4)
- 2) On June 4, 2013, the Defendant signed SNAP Rights and Responsibilities acknowledging his understanding that to buy, sell, trade, steal, or otherwise use SNAP benefits for monetary gain or other considerations is considered SNAP trafficking, and that the penalty for doing so would result in disqualification from SNAP. (Exhibits M-10 and M-11)
- 3) The Movant alleged that the Defendant committed an Intentional Program Violation by trafficking his SNAP benefits and requested that a SNAP penalty of twelve (12) months be imposed against him.
- 4) [REDACTED] was disqualified by the USDA-FNS division for trafficking SNAP benefits. The Defendant was implicated as allegedly trafficking his SNAP benefits with [REDACTED], based on history of purchases made with his EBT card. (Exhibits M-3, M-6, M-8)
- 5) [REDACTED] is a rural convenience store which carries fresh meats, dairy items, breads, snacks, frozen foods, canned goods, and various sundries. USDA-FNS photographs document moderately stocked shelving, refrigeration, and freezer units. (Exhibit M-7)

- 6) The Movant contended that the Defendant was suspected of using his EBT card to buy food on credit, buying non-food items, and/or giving his Personal Identification Number (PIN) to the store owner.
- 7) The Movant contended that the Defendant misused his benefits by giving his PIN to the store owner and by admitting to transactions possibly having been made without his consent.
- 8) The Defendant does not drive. [REDACTED] is located within walking distance of the Defendant's home.
- 9) The Defendant purchased fresh meats such as pork chops and hamburger from [REDACTED].
- 10) If the Defendant did not have transportation to a larger store, he purchased bread and other food items from [REDACTED] to last him through the month.
- 11) The owner of [REDACTED] took the Defendant's card into a back room to complete the purchase transactions.
- 12) The owner of [REDACTED] asked the Defendant to provide his PIN verbally.
- 13) If the Defendant did not provide his PIN to the store owner, he was not permitted to purchase his groceries. (Exhibit M-2)
- 14) The Defendant could not recall all the purchase transactions. The Defendant conceded that there may be some transactions he did not authorize. (Exhibits M-2 and M-9)
- 15) Between August 20, 2014 and January 11, 2017, the Defendant made 26 EBT transactions at [REDACTED]. Of those transactions, there were two consecutive transactions on May 9, 2016, in the amounts of \$87.25 and \$2.99; and two consecutive transactions on August 10, 2016, in the amounts of \$72.05 and \$8.64. (Exhibit M-9)

APPLICABLE POLICY

Code of Federal Regulations – 7 CFR §273.16 establishes that:

An individual making a false or misleading statement, 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 CFR §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 (WVIMM) §9.2 sets forth:

The penalty for an individual found guilty of an IPV First Offense is twelve (12) month disqualification...

West Virginia Common Chapters §740.22K explains that:

The Hearing Official shall base the determination of IPV on clear and convincing evidence that demonstrates that the Defendant committed, and intended to commit an IPV... The Hearing Official shall render a decision after weighing the evidence and testimony presented at the hearing. In rendering a decision, the Hearing Official shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and controlling court orders.

DISCUSSION

In a separate investigation, the USDA found [REDACTED] was trafficking SNAP benefits and therefore, permanently disqualified it from participating as a SNAP retailer. In its investigation, the USDA identified the Defendant's EBT account as containing purchases which were deemed to be suspect. The Movant investigated the Defendant and determined that the Defendant participated in SNAP trafficking by using his EBT benefits at [REDACTED] and verbally providing the store owner with his PIN during twenty-six (26) transactions between August 2014 and January 2017, some of which the Defendant could not recall making. The Movant requested disqualification of the Defendant from SNAP benefits for twelve (12) months. The Defendant contended that he used EBT benefits at [REDACTED] for food purchases only and admitted that he was required to verbally provide his EBT PIN to the store owner to be permitted to purchase his food; he contended that he did not engage in a SNAP Intentional Program Violation.

Federal regulations define trafficking as the exchange of SNAP benefits accessed through an EBT card for cash or considerations other than eligible food. An IPV occurs when an individual is found to have trafficked his SNAP benefits. The Movant had to prove by clear and convincing evidence that the Defendant intentionally committed an act that violated SNAP regulations related to the misuse of SNAP benefits. The Movant contended that the Defendant's disclosure of his PIN to [REDACTED] owner and subsequent transactions that the Defendant could not recall constitute a violation that qualifies as an IPV.

The Defendant denied paying off store credit or purchasing non-food items with his EBT card. The Defendant testified that he does not drive and [REDACTED] is within walking distance of his home. The Defendant testified that he purchased fresh meat and other items from [REDACTED] and that the amount of purchase would add up quickly based on store pricing. The Defendant stated that large purchases occurred when he shopped for items to last throughout the month when he was unable to “get a ride” to larger grocery stores. The Defendant provided testimony consistent with the statement given to the Movant on June 1, 2017, regarding providing his PIN verbally to the store owner to complete his transactions. The Defendant testified that he did not recall whether he had made all the purchases listed on his transaction printout. The Defendant speculated that some purchases made consecutively on the same date could be due to separate charges of tax.

A review of the Defendant’s EBT usage with [REDACTED] documented that the Defendant made seventeen (17) purchases below \$50, eight (8) purchases between \$50 and \$100, and one (1) purchase above \$100 with his EBT card over a thirty (30) month period. The amount of SNAP benefits spent by the Defendant at [REDACTED] is not excessive. The Defendant had consecutive same-day purchases on two occasions over a thirty (30) month period which does not suggest misuse of the Defendant’s SNAP benefits. The evidence submitted by the Movant did not establish a questionable pattern of EBT usage for the Defendant.

A review of federal regulations, policies, and SNAP Rights and Responsibilities signed by the Defendant does not specify that the Defendant is not allowed to provide the grocer with his PIN to complete an EBT transaction. While the Defendant could not recall whether he had made all transactions listed on his EBT printout, it is reasonable to expect that he may not recall all transactions made in a thirty (30) month period. His inability to recall these transactions do not establish that he provided his EBT PIN to [REDACTED] for reasons other than for the purchase of eligible food items.

The Movant did not establish by clear and convincing evidence that the Defendant intentionally committed a SNAP program violation by providing his PIN to [REDACTED] for the purpose of trafficking SNAP benefits. Although [REDACTED] was found to have conducted SNAP trafficking, evidence did not prove that the Defendant was assisting [REDACTED] in trafficking SNAP benefits.

CONCLUSIONS OF LAW

- 1) An Intentional Program Violation occurs when an individual is found to have trafficked his SNAP benefits.
- 2) The Movant failed to prove by clear and convincing evidence that the Defendant trafficked his SNAP benefits with [REDACTED].
- 3) The Defendant did not commit an Intentional Program Violation.

- 4) The Movant's finding that the Defendant received SNAP benefits to which he was not legally entitled due to intentionally violating a SNAP rule, is incorrect.

DECISION

It is the finding of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation. It is the decision of the State Hearing Officer to **Reverse** the proposal of the Movant to impose penalty against the Defendant's Supplemental Nutritional Assistance Program benefits.

ENTERED this 4th day of August 2017.

Tara B. Thompson
State Hearing Officer