



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

OFFICE OF INSPECTOR GENERAL

BOARD OF REVIEW

Board of Review

416 Adams Street Suite 307

Fairmont, WV 26554

304-368-4420 ext. 79326

**Bill J. Crouch
Cabinet Secretary**

**Jolynn Marra
Interim Inspector General**

September 5, 2018



RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2017

Dear Ms. [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,

State Hearing Officer
Member, State Board of Review

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

cc: Wanda Morgan, Investigations and Fraud Management

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

██████████,

Defendant,

v.

Action Number: 18-BOR-2017

**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 July 12, 2018. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual and Federal Regulations at 7 CFR §273.16. The hearing was convened on August 21, 2018.

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 12 months.

At the hearing, the Department appeared by Wanda Morgan, Investigations and Fraud Management (IFM). The Defendant failed to attend the hearing. All witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 DHHR Notice, dated December 7, 2017
- M-2 DHHR Email Correspondence, dated April 18, 2018
- M-3 ebtEDGE Case Information Screenshot, printed May 17, 2018
- M-4 ebtEDGE Previous Card Information, printed May 17, 2018
- M-5 ebtEDGE Client Change History Search, printed May 18, 2018
- M-6 ebtEDGE Client Transaction Search, printed May 18, 2018
- M-7 ebtEDGE Transaction Search Results, printed May 18, 2018
- M-8 Transaction Details, printed August 15, 2018
- M-9 eRAPIDS Case Comments, dated August 2015 through February 2018
- M-10 IFM Notices dated May 18 and June 1, 2018
- M-11 West Virginia Income Maintenance Manual (WVIMM) §1.4 and §3.2.1.B

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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Defendant is a recipient of SNAP benefits.
- 2) On December 7, 2017, the Movant issued a notice advising the Defendant that she had ordered 4 Electronic Benefit Transfer (EBT) cards within the last year and as a result, her EBT transactions would be monitored closely and that an IFM investigation may be conducted if the number of EBT cards ordered continued to increase. (Exhibit M-1)
- 3) The December 7, 2017 notice listed violations considered misuse or trafficking of SNAP benefits. (Exhibit M-1)
- 4) On April 18, 2018, the Defendant was assigned to IFM for investigation of possible SNAP trafficking. (Exhibit M-2)
- 5) A total of 13 permanent EBT cards had been issued to the Defendant as of April 6, 2018. Between August 20, 2013 and March 6, 2018, the Defendant had been issued 12 EBT cards: 1 in 2013, 3 in 2015, 1 in 2016, 4 in 2017, 3 in 2018. (Exhibits M-3 through M-5)
- 6) The EBT card issued on August 6, 2015 was not received by the Defendant due to an error by the Movant recording the Defendant's new address in the system; as a result, the Movant issued another card to the Defendant on August 19, 2015. (Exhibits M-4 and M-9)
- 7) On November 13, 2017, the Defendant requested re-issuance of her EBT card due to the EBT card issued on October 30, 2017 being stolen. (Exhibit M-4 and M-9)
- 8) On December 4, 2017, the EBT card issued to the Defendant on November 13, 2017, was returned to the Movant as undeliverable. (Exhibit M-4 and M-9)
- 9) On December 18, 2017, the Defendant reported a change of address and reported that she still required a new EBT card to be issued. (Exhibit M-9)
- 10) On January 31, 2018, the Defendant advised the Movant that she still had not received a re-issued EBT card and a new EBT card was issued by the Movant. (Exhibits M-4 and M-9)
- 11) The Defendant reported the EBT card issued on January 31, 2018 was lost and a new EBT card was issued to the Defendant on February 12, 2018. (Exhibit M-4)
- 12) Although the Defendant continued to receive SNAP benefits via EBT card, no EBT transactions were completed between October 30, 2017 and February 15, 2018. (Exhibit M-7)
- 13) The Defendant reported the EBT card issued on February 12, 2018 as stolen and a new EBT card was issued to the Defendant on March 6, 2018. (Exhibit M-4)
- 14) The Defendant used the EBT card issued on February 12, 2018 for transactions from February 16, 2018 through February 20, 2018. (Exhibits M-4 and M-7)
- 15) No EBT transactions were completed with the EBT card issued on March 6, 2018. (Exhibit M-4 and M-7)

- 16) Movant documentation, last updated April 6, 2018, reflected the status of the March 6, 2018 issued EBT card as lost. (Exhibit M-4)
- 17) From June 2015 through April 2018, the Defendant made multiple EBT transactions on the same day, varying in time from seconds to hours between transactions. (Exhibits M-6 through M-8)
- 18) On May 18 and June 1, 2018, the Movant issued notices advising the Defendant that a complaint had been received alleging she may have used SNAP benefits improperly, that an investigation by IFM was being conducted, and that the Defendant was requested to attend an appointment to discuss the complaint. (Exhibit M-10)

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WVIMM) §1.4.19.C.2 EBT Card Issuance provides in part:

After a client requests a replacement EBT card four or more times in a rolling 12-month period, an education letter is issued that contains the penalties for trafficking, education of card handling procedures, and information that future replacements may be blocked until contact is made with the Department.

WVIMM Chapter 12, Appendix A.3 EBT Card/PIN Replacement Guide provides in part:

When EBT cards are mailed but never received, the card is replaced with no replacement limits.

When an EBT card is lost, destroyed, damaged, or stolen, the card is replaced with no replacement limits.

Code of Federal Regulations (January 2018) 7 CFR §271.2 provides in part:

Trafficking means attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via EBT cards for cash or consideration other than eligible food, either directly, indirectly, in complicity, or in collusion with others, or acting alone.

Code of Federal Regulations (January 2018) 7CFR §273.16(a)(1) provides in part:

Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation as defined in paragraph (c) of this section.

Code of Federal Regulations (January 2018) 7CFR §273.16(c) provides in part:

An Intentional Program Violation (IPV) consists of having intentionally (1) made false or misleading statements, or misrepresented, concealed, or withheld facts; or (2) committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards.

Code of Federal Regulations (January 2018) 7CFR §273.16(e)(4) provides in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence.

DISCUSSION

The Defendant is a recipient of SNAP benefits. The Movant petitioned the Board of Review for an Administrative Disqualification Hearing (ADH) and requested the Defendant be disqualified from SNAP benefits for a 12-month penalty period and an Intentional Program Violation (IPV) be established because the Defendant's EBT card activity raised suspicion of possible misuse or trafficking of her EBT card. The Defendant was notified of the ADH scheduling and failed to appear. Pursuant to federal regulations, the hearing was held in the Defendant's absence.

To demonstrate that the Defendant had committed an IPV, the Movant had to prove that the Defendant committed an act that constitutes a violation of SNAP, SNAP regulations, or any State statute for using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards. The evidence reflected that the Defendant had been issued 13 EBT cards between 2015 and April 2018.

The Movant argued that the Defendant was expected to "keep up" with her EBT card and not to continually order a new card monthly. The Movant testified that the Defendant demonstrated a pattern of requesting a new EBT card following her issuance of SNAP benefits and argued that the Defendant's request pattern indicated that SNAP benefits were being trafficked in exchange for money, cash, or drugs. The Movant testified that the Defendant's SNAP transaction pattern of multiple purchases within a close period alerts the Movant to investigate the Defendant's purchasing activity. The Movant argued that multiple purchases made within a one to three-minute period indicate that the EBT card may have been sold to someone or that the Defendant may be buying items for someone who is not in her household. The Movant testified that an act of IPV was established based on the evidence submitted reflecting the Defendant's EBT activity and suspicion of possible trafficking of her SNAP EBT card.

Policy provides that in the circumstances reflected by the evidence, there is no limit to the number of cards that can be issued to the SNAP beneficiary. Pursuant to regulations, the acts of requesting multiple EBT cards and making multiple SNAP transactions within a close period are not acts of IPV. The December 2017 notice educated the Defendant regarding violations considered misuse or trafficking of SNAP benefits; however, *misuse* is not defined by federal regulations or policy and the evidence did not verify that any act of *trafficking* of SNAP benefits had occurred.

The evidence established that an investigation of the Defendant's EBT activity was initiated by the Movant in accordance with regulations; however, suspicion of trafficking SNAP benefits does not establish that an act of IPV has occurred.

CONCLUSIONS OF LAW

- 1) The Movant did not prove by clear and convincing evidence that the Defendant committed an act that constitutes a violation of SNAP, SNAP regulations, or any State statute for using, presenting, transferring, acquiring, receiving, possessing, or trafficking of SNAP benefits or EBT cards.
- 2) The Defendant did not commit an act of Intentional Program Violation.

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 deny the proposal of the Movant to impose penalty against the Defendant's Supplemental Nutritional Assistance Program benefits.

ENTERED this 5th day of September 2015.

Tara B. Thompson
State Hearing Officer