



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
Berkeley County DHHR
PO Box 1247
Martinsburg, WV 25402**

**Bill J. Crouch
Cabinet Secretary**

**Jolynn Marra
Interim Inspector General**

October 16, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2137

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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Cassandra Burns, IFM, [REDACTED] County DHHR

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

████████████████████,

Defendant,

v.

Action Number: 18-BOR-2137

**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 August 3, 2018. 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 October 2, 2018.

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

At the hearing, the Movant appeared by Cassandra Burns, Criminal Investigator with Investigations and Fraud Management (IFM). Appearing as witnesses for the Movant were ██████████. The Defendant failed to appear. All witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- M-1 Code of Federal Regulations – 7 CFR §273.16
- M-2 United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) Store Survey; Store Visit Sketch of ██████████; Declaration of Completeness of Record dated May 13, 2016; Notice of Disqualification dated February 17, 2016; Printout of Electronic Benefit Transaction (EBT) History for ██████████; Photographs of ██████████
- M-3 EBT Transaction History for Defendant from January 2, 2013 through April 16, 2016

- M-4 Statement from [REDACTED] dated February 22, 2017; Driver History Inquiry and Picture of Defendant
- M-5 Statement from [REDACTED] dated February 23, 2017
- M-6 CSLE SNAP Review form signed and dated December 17, 2013
- M-7 inROADS SNAP Application dated June 30, 2014
- M-8 inROADS SNAP Application dated July 30, 2015
- M-9 West Virginia Income Maintenance Manual, Chapter 20, §20.2
- M-10 Advance Notice of Administrative Disqualification Hearing Waiver dated July 23, 2018

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 and misuse of her SNAP benefits and requested that a SNAP penalty of 12 months be imposed against her.
- 2) The Defendant was notified of the hearing by scheduling order mailed on August 8, 2018. The Defendant failed to appear for the hearing or provide good cause for her failure to do so. In accordance to 7 CFR §273.16(e)(4)) and West Virginia Department of Health and Human Resources' Common Chapters Manual, §740.20, the hearing was held without the Defendant in attendance.
- 3) [REDACTED] was disqualified 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 as allegedly engaging in trafficking activity with [REDACTED], based on a pattern of purchases made with her Electronic Benefit Transaction (EBT) card. (Exhibit M-2)
- 4) [REDACTED] 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 the USDA-FNS survey of the store's inventory and photographs documented empty shelving. (Exhibit M-2)
- 5) The Defendant's EBT transaction history from January 2, 2013 through April 16, 2016 showed multiple purchases which are excessively large for the type and number of items available for purchase at [REDACTED]. (Exhibit M-3)
- 6) The Defendant's EBT transaction history from January 2, 2013 through April 16, 2016 showed numerous same-day EBT transactions with [REDACTED], making as many as three (3) purchases in one day, some ranging only minutes apart to a few hours apart. (Exhibit M-3)

- 7) The Movant showed by clear and convincing evidence that the Defendant was trafficking her SNAP benefits by purchasing non-food items and/or “running a tab” at the store and paying this account using her EBT card. (Exhibits M-3 through M-5).
- 8) The Defendant does not have any prior IPV penalties.

APPLICABLE POLICY

Code of Federal Regulations, 7 CFR §273.16, mandates that 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.

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 §11.2.3.B states that IPV's include making false or misleading statements, misrepresenting facts, 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. The client(s) who is found to have committed an IPV is ineligible to participate in the program for a specified time, depending on the number of offenses committed.

West Virginia Income Maintenance Manual §3.2.1.B.5 states that persons who have been found guilty of an IPV are disqualified as follows: first offense = one-year disqualification; second offense = two-year disqualification; and third offense = permanent disqualification.

DISCUSSION

In April 2016, the USDA-FNS division found that [REDACTED] of [REDACTED] West Virginia was trafficking SNAP benefits and, therefore, permanently disqualified it from participating as a SNAP retailer. In its investigation, the USDA-FNS division identified the Defendant's EBT account as containing questionable purchases which was deemed to be suspect due to the amount of the purchase relative to the size and inventory of [REDACTED] and due to multiple transactions in an unusually short time frame.

An investigation of the Defendant ensued by the Movant who determined that the Defendant had purchased merchandise on credit for a promise of future payment from her EBT card along with purchasing non-eligible EBT items. In reviewing the Defendant's EBT history, the Movant found

several questionable transactions which were excessively large for [REDACTED] and ranged from only seconds apart to a few hours apart. At the hearing, the owners of [REDACTED], [REDACTED], testified that the Defendant was permitted to purchase cigarettes using her EBT card, and was allowed to purchase items on store credit which was paid off the following month with her EBT card.

The Movant provided clear and convincing evidence that the Defendant trafficked her SNAP benefits with [REDACTED] in violation of State and Federal SNAP regulations. The Defendant failed to appear to refute these allegations.

CONCLUSIONS OF LAW

- 1) An Intentional Program Violation occurs when an individual is found to have trafficked his or her SNAP benefits.
- 2) There was clear and convincing evidence that the Defendant trafficked her SNAP benefits with [REDACTED] by purchasing ineligible EBT merchandise and purchasing items by “running a tab” and paying her “tab” with her EBT card.
- 3) A 12-month SNAP penalty will be applied to the Defendant as this is her first offense.

DECISION

It is the finding of the State Hearing Officer that the Defendant committed an Intentional Program Violation. The Defendant will be disqualified from participation in the Supplemental Nutrition Assistance Program for 12 months, beginning November 1, 2018.

ENTERED this 16th day of October 2018.

Lori Woodward, State Hearing Officer