



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
203 East Third Avenue
Williamson, WV 25661**

**Jolynn Marra
Interim Inspector General**

September 21, 2018



RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2189

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,

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: 18-BOR-2189

**WEST VIRGINIA MOVANT 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 13, 2018. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Movant of Health and Human Resources' (WV DHHR) Common Chapters Manual and Federal Regulations at 7 CFR Section 273.16. The hearing was convened on September 18, 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 thus should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for twelve months.

At the hearing, the Movant appeared by Brian Shreve, Repayment Investigator for the WV DHHR Investigations and Fraud Management (IFM) unit. Appearing as witnesses for the Movant were Rachel Ferrell, Family Support Specialist for the WV DHHR, ██████████ County Office, and Gary Hunt, Child Support Specialist for the WV Bureau of Child Support Enforcement (BCSE), ██████████ County Office. The Defendant appeared *pro se*. All participants 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 Form ES-FS-5, Food Stamp (now SNAP) Claim Determination
- M-3 Case recordings from Defendant's SNAP case record, from September 18 through November 8, 2017
- M-4 Electronic Benefits Transfer (EBT) Card Transaction History for a certain SNAP and WV WORKS cash assistance recipient, listing SNAP purchases made from September 6 through September 10, 2017, and cash assistance purchases and withdrawals made from September 1 through September 13, 2017

- M-5 [REDACTED] County Sheriff's Office Complaint Report, dated September 17, 2017
- M-6 Dismissal Order from Magistrate Court of [REDACTED] County, WV
- M-7 Written Statement from [REDACTED], dated May 30, 2018
- M-8 Written Statement from [REDACTED], dated June 28, 2018
- M-9 Form DFA-RR-1, Rights and Responsibilities, signed and dated by Defendant on February 15, 2017
- M-10 Form DFA-RR-1, Rights and Responsibilities, signed and dated by Defendant on May 25, 2018
- M-11 West Virginia Income Maintenance Manual (WV IMM) Chapter 11, §11.2
- M-12 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 July 31, 2018

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 Movant's representative contended the Defendant committed an Intentional Program Violation and should be disqualified from SNAP for one year because she accessed another SNAP recipient's Electronic Benefits Transactions (EBT) card and spent SNAP benefits which did not belong to her.
- 2) The Defendant had been a recipient of SNAP benefits since 1996.
- 3) In September 2017, the Defendant was employed at a convenience store known as "[REDACTED]" in [REDACTED] WV.
- 4) On September 10, 2017, the Defendant permitted a person who identified herself on a telephone call as a certain SNAP recipient to give her an EBT card and Personal Identification Number (PIN) for the purpose of accessing this person's SNAP benefits. At the caller's request, the Defendant made a purchase on the caller's behalf in the amount of \$12.51 from the caller's EBT account and gave the purchased items to certain individuals as directed by the purported card owner when they arrived at the store sometime after the telephone call.
- 5) On September 18, 2017, the individual who owned the EBT card in question came to the WV DHHR, [REDACTED] County Office, to report that her EBT card number and PIN were stolen by "an employee at [REDACTED]" (Exhibit M-3). A worker at the [REDACTED] County Office directed this person to file a police report about the theft.

- 6) The EBT card owner filed a police complaint on or around September 18, 2018 (Exhibit M-5). A [REDACTED] County Sheriff's Deputy went to the [REDACTED] convenience store and arrested the Defendant on September 18, 2018. At this time, the convenience store manager terminated the Defendant's employment.
- 7) On March 16, 2018, [REDACTED] County Magistrate [REDACTED] dismissed the complaint against the Defendant (Exhibit M-6).
- 8) The Movant's representative asserted that because the Defendant was a SNAP recipient as well as an employee at the convenience store in question, she committed an intentional program violation by accessing another SNAP recipient's EBT card. By doing this, she spent \$12.51 in SNAP benefits which did not belong to her.

APPLICABLE POLICY

WV IMM Chapter 11, §11.2 states that when an AG has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation (IPV) claim. The claim is the difference between the allotment the client received and the allotment he [or she] should have received.

WV IMM Chapter 3, §3.2.1.B.5 reads, "Persons who have been found guilty of an IPV are disqualified as follows: First Offense – one year; Second Offense – two years; Third Offense – permanent.

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.

DISCUSSION

The Defendant was a SNAP recipient and a part-time employee at a convenience store, "[REDACTED]," located in [REDACTED] WV. She testified that on September 10, 2017, a person referring to herself as a certain SNAP recipient from the community called her at work and asked to purchase some items on her behalf. These items totaled \$12.51. The Defendant testified that the caller gave her a SNAP EBT card number and PIN, and asked her to access her EBT account to pay for the items. The caller asked her to give the items to two persons who would arrive at the store later that day.

The Movant's witness, a Family Support Specialist at the [REDACTED] County Office of the WV DHHR, testified that on September 18, 2018, the owner of the EBT card whose account the

Defendant accessed came into the office to report her EBT card number and PIN were stolen by an employee at the [REDACTED] in [REDACTED] WV (Exhibit M-3). The witness testified she suggested the card owner file a police complaint about the theft.

The card owner filed a police complaint on September 18, 2018 (Exhibit D-5). A [REDACTED] County, WV Sheriff's Deputy investigated the complaint and arrested the Defendant at her place of employment, the convenience store, on that date. According to the complaint, the Defendant was fired from her job at the time of her arrest. The Defendant confirmed that she was fired as she was being arrested.

The Movant's representative submitted as evidence a printout of the transaction history for the EBT card of the SNAP recipient who made the complaint (Exhibit M-4). This print-out shows a purchase, noted on the print-out as "POS Purchase," in the amount of \$12.51 made on September 10, 2017, at 13:51 military time, or 1:51 PM. The print-out shows another transaction made on September 10, 2017, at 14:53 military time or 2:53 PM, which was noted on the print-out as "POS Credit" also in the amount of \$12.51. The Movant's representative testified that he did not know what this transaction description meant.

The Movant's representative also submitted a Criminal Judgment Order dated March 16, 2018 (Exhibit M-6), indicating that the criminal charges against the Defendant were dismissed on that date. The Order reads as follows in part: "The state is unable to establish probable cause at today's hearing."

The Defendant testified that she made a purchase with an EBT card, the number for which was given to her via telephone call. She testified that this was a violation of her employer's policy, and she was fired for doing so. However, the Movant's representative did not provide sufficient evidence to establish that the EBT benefits, in the amount of \$12.51, were diverted for the Defendant's use. Also, the transaction described as "POS Credit" made in the amount of \$12.51 about an hour after the initial purchase appears to be a purchase return, and the amount in question was credited back to the EBT card owner's account.

The Movant was required to provide clear and convincing evidence that the Defendant committed an Intentional Program Violation (IPV) by accessing another SNAP recipient's EBT account for her own use. There is no clear and convincing evidence that the Defendant did this.

CONCLUSIONS OF LAW

- 1) The Movant was required to provide clear and convincing evidence that the Defendant made false or misleading statements, or misrepresented, concealed or withheld facts, in order to receive SNAP benefits to which her assistance group was not entitled, as defined by the Code of Federal Regulations 7 CFR §273.16.
- 2) The Movant did not present clear and convincing evidence that the Defendant committed an Intentional Program Violation by using her position as a convenience store clerk to access another SNAP recipient's benefits.

- 3) The Movant may not impose a disqualification penalty against the Defendant's receipt of SNAP benefits.

DECISION

It is the ruling of the Hearing Officer that the Defendant did not commit an Intentional Program Violation. She will not be disqualified from participating in SNAP.

ENTERED this 21st Day of September 2018.

**Stephen M. Baisden
State Hearing Officer**