



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**1027 N. Randolph Ave.**  
**Elkins, WV 26241**

**Bill J. Crouch**  
**Cabinet Secretary**

**Jolynn Marra**  
**Interim Inspector General**

June 28, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-1680

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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

cc: Elizabeth Mullins, WVDHHR

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

[REDACTED],

**Defendant,**

v.

**Action Number: 19-BOR-1680**

**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 [REDACTED], requested by the Movant on May 3, 2019. 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 Section 273.16. The hearing was convened on June 12, 2019.

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

At the hearing, the Movant appeared by Elizabeth Mullins, Repayment Investigator, WVDHHR. The Defendant failed to appear.

The Movant's witness was sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- |     |  |
|-----|--|
| M-1 | Code of Federal Regulations Section 273.16   |
| M-2 | Repayment Referral   |
| M-3 | Correspondence from [REDACTED]   |
| M-4 | Client Contact Report from Movant's Child Protective Services Unit   |
| M-5 | Electronic Benefit Transfer (EBT) history/transactions   |
| M-6 | Food Stamp Claim Determination, Case Summary, Case Benefit Summary, Food Stamp Allotment Determination, Non-Financial Eligibility Determination, Payee/Representative/Additional Card Holder Questions, and Payee/Representative information |
| M-7 | SNAP application with rights and responsibilities signed by Defendant on September 20, 2018, and Case Comments   |
| M-8 | West Virginia Income Maintenance Manual Chapter 11.2   |
| M-9 | West Virginia Income Maintenance Manual Chapter 11.6   |

M-10	Electronic Disqualified Recipient System information
M-11	Advance Notice of Administrative Disqualification Hearing Waiver dated April 22, 2019, and Waiver of Administrative Disqualification Hearing

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) A request for an Administrative Disqualification Hearing was received by the Board of Review from the West Virginia Department of Health and Human Resources, hereinafter Movant, on May 3, 2019.
- 2) The Movant contends that the Defendant has committed an Intentional Program Violation (IPV), and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, for a period of 12 months.
- 3) Notification of the June 12, 2019 hearing was mailed to the Defendant on or about May 8, 2019 via First Class U.S. Mail.
- 4) The hearing convened as scheduled at 10:30 a.m. on June 12, 2019, and as of 10:45 a.m., the Defendant failed to call in for the telephone hearing. As set forth in the Code of Federal Regulations found at §7 CFR 273.16 (e) (4), and the West Virginia Department of Health and Human Resources Common Chapters Manual Chapter 740.20, the hearing was conducted without the Defendant in attendance.
- 5) The Movant received a Benefit Recovery Referral (M-2) from the Department's Economic Services Unit for the period of December 1, 2018 through February 28, 2019. The Referral states that the Defendant had been an inmate at [REDACTED] since December 6, 2018, and that an unidentified individual had been using the Defendant's Electronic Benefit Transfer (EBT) card to make purchases while she was incarcerated.
- 6) Information from [REDACTED] (M-3) indicates that the Defendant was booked at the prison on December 6, 2018, and was released on bond on February 22, 2019.
- 7) A Client Contact Report from the Respondent's Child Protective Services Unit (M-4) confirms that a Department worker visited the Defendant at [REDACTED] on December 7, 2018.
- 8) An Electronic Benefit Transfer (EBT) card transaction search (M-5) reveals that an unknown individual used the Defendant's EBT card during the period of December 14, 2018 to December 24, 2018 while she was incarcerated.

- 9) The Defendant had designated no authorized representatives for her EBT card (M-6).

### **APPLICABLE POLICY**

Code of Federal Regulations Section 273.16.c.1 (M-1) states that an Intentional Program Violation includes committing an 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 as part of an automated benefit delivery system (access device).

West Virginia Income Maintenance Manual §11.2.3.B (M-2) 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**

Federal regulations specify that an Intentional Program Violation includes committing an 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 as part of an automated benefit delivery system (access device).

Based on information provided during the hearing, the Defendant was incarcerated when her EBT card was used by an unknown individual during the period of December 14, 2018 to December 24, 2018. As no one but the Defendant was authorized to use the EBT card, it is reasonable to conclude that the Defendant gave an unauthorized user access to the card and provided information concerning her private PIN number, so that the unauthorized user could make purchases with the card.

As the Defendant allowed an unauthorized user to fraudulently purchase items with her EBT card while she was incarcerated, the Movant acted correctly in proposing an Intentional Program Violation penalty.

### **CONCLUSION OF LAW**

- 1) The Defendant was incarcerated from December 6, 2018 through February 22, 2019.
- 2) The Movant provided clear and convincing evidence that the Defendant allowed an unauthorized user to make purchases with her EBT card during the time she was incarcerated.
- 3) The act of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents as part of an automated benefit delivery system (access device) constitutes an Intentional Program Violation.
- 4) The penalty for a first offense Intentional Program Violation is exclusion from participation in SNAP for 12 months.

### **DECISION**

The State Hearing Officer finds that the Defendant committed an Intentional Program Violation. As this is the Defendant's first offense, she will be excluded from participation in SNAP for 12 months, effective August 1, 2019.

**ENTERED this 28th Day of June 2019.**

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**Pamela L. Hinzman**  
**State Hearing Officer**