

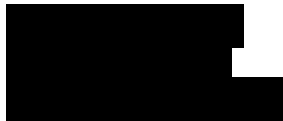


**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241**

**Bill J. Crouch
Cabinet Secretary**

**Jolynn Marra
Interim Inspector General**

July 12, 2019



RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-1741

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 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: Debra Carey, WVDHHR

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

[REDACTED],

Defendant,

v.

Action Number: 19-BOR-1741

**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 23, 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 July 9, 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 Debra Carey, Repayment Investigator, WVDHHR. The Defendant appeared *pro se*.

The witnesses were sworn and the following documents were admitted into evidence.

Movant's Exhibits:

- | | |
|------|---|
| M-1 | ADH Hearing Summary |
| M-2 | Benefit Recovery Referral |
| M-3 | Data Exchange - SSA Prisoner Match Information |
| M-4 | EBT Transaction History |
| M-5 | EBT Card/PIN Information |
| M-6 | Individual Demographics information for Defendant's SNAP case |
| M-7 | Payee/representative information concerning Defendant's EBT card |
| M-8 | SNAP application signed by Defendant on October 5, 2016 and SNAP review form signed by Defendant on October 3, 2017 |
| M-9 | Food Stamp Claim Determination for the period of January 2018 through February 2018 |
| M-10 | Food Stamp Allotment Determination |

M-11	Statement signed by Defendant on May 23, 2019
M-12	Advance Notice of Administrative Disqualification Hearing Waiver dated May 23, 2019
M-13	Waiver of Administrative Disqualification Hearing signed by Defendant on May 23, 2019
M-14	West Virginia Income Maintenance Manual Chapters 11.1 and 11.2
M-15	Code of Federal Regulations Section 273.16

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 23, 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) The Movant received a Benefit Recovery Referral (M-2) from the Department's Economic Services Unit on October 18, 2018. The referral states that the Defendant was incarcerated on January 3, 2018 and his Electronic Benefit Transfer (EBT) card was used by an unknown individual to make purchases while he was in prison.
- 4) The Defendant was incarcerated on January 3, 2018 and was released from prison on January 8, 2019 (M-3).
- 5) An Electronic Benefit Transfer (EBT) card transaction search (M-4) reveals that an unknown individual used the Defendant's EBT card to make several purchases during the period of January 5, 2018 through February 7, 2018 during the Defendant's incarceration.
- 6) The Defendant was the sole member of his SNAP Assistance Group (M-6) and had designated no authorized representatives for his EBT card (M-7).
- 7) The Defendant signed application/review forms for SNAP benefits on October 5, 2016 and October 3, 2017 (M-8). These forms include a Rights and Responsibilities section which indicates that SNAP benefits are to be used by or on behalf of the SNAP Assistance Group to purchase food or seeds.

APPLICABLE POLICY

Code of Federal Regulations Section 273.16.c.1 (M-15) 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-14) 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).

The Defendant testified that his EBT card and other cards were stolen from his residence while he was incarcerated. He stated that he was not permitted to lock the door to his residence when the sheriff's department came to his home to arrest him. The Defendant contended that he was unaware that the cards had been stolen until he was released from prison. However, the Defendant admitted that he had given his EBT card PIN to "a couple family members and one or two friends," and signed a statement (M-11) confirming that he had given other individuals his PIN to go to the store for him when he did not have a vehicle.

CONCLUSIONS OF LAW

- 1) The Defendant was incarcerated from January 3, 2018 through January 8, 2019.
- 2) The Defendant admitted that he had given his PIN to several individuals and allowed them to make purchases with his EBT card prior to his incarceration, although there were no authorized users listed for the card.

- 3) While the Defendant's EBT card may have been stolen from his residence while he was incarcerated, the benefits on the card were only accessed because the Defendant had previously provided unauthorized users with his PIN.
- 4) 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.
- 5) As the Defendant gave unauthorized users access to his PIN, the Movant acted correctly in proposing an Intentional Program Violation penalty.
- 6) 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, he will be excluded from participation in SNAP for 12 months, effective August 1, 2019.

ENTERED this 12th Day of July 2019.

**Pamela L. Hinzman
State Hearing Officer**