



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

**Bill J. Crouch**  
Cabinet Secretary

**Board of Review  
416 Adams Street Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 79326**

**Jolynn Marra**  
Interim Inspector General

September 24, 2019



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 19-BOR-1905

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,

State Hearing Officer  
Member, State Board of Review

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

cc: Melissa Bar, Investigations and Fraud Management

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

██████████,

**Defendant,**

**v.**

**Action Number: 19-BOR-1905**

**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 June 18, 2019. 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, 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 and should therefore be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for 12 months.

At the hearing, the Movant appeared by Melissa Barr, Investigations and Fraud Management. The Defendant failed to appear. The witness was sworn and the following documents were admitted into evidence.

**Movant's Exhibits:**

- M-1 DHHR Notice, dated May 21, 2019
- M-2 Advance Notice of Administrative Disqualification Hearing Waiver, dated May 31, 2019; Waiver of Administrative Disqualification Hearing, unsigned
- M-3 Code of Federal Regulations (CFR) § 273.16; West Virginia Income Maintenance Manual (WVIMM) §§ 3.2.1.B.5 and 11.2.3.B
- M-4 DHHR Application and Review Form for Financial, Medical, and SNAP
- M-5 DHHR Notice, dated March 28, 2019; Incarceration/ Confinement Verification; Booking Data, printed April 2, 2018
- M-6 ebtEDGE print-out, printed July 24, 2018
- M-7 SNAP Purchase Details, dated February 10 and February 12, 2018
- M-8 Transaction Details, dated February 9, 2018
- M-9 Handwritten Statement, signed July 24, 2018
- M-10 Electronic Disqualified Recipient System printout, dated August 2, 2019

**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 May 31, 2019, the Movant issued a notice advising the Defendant that the Respondent had found the Defendant to have intentionally violated SNAP by trafficking SNAP benefits by transferring his EBT card/PIN to an individual who was not included in his SNAP assistance group (Exhibit M-2).
- 3) On March 29, 2017, the Defendant signed a Combined Application and Review Form for Financial, Medical, and SNAP in the presence of Movant worker, [REDACTED] (Exhibit M-4).
- 4) The March 29, 2017 application did not indicate any additional household or Assistance Group (AG) members (Exhibit M-4).
- 5) The March 29, 2017 application provided an address of [REDACTED] – an address that belonged to [REDACTED], friend of [REDACTED] (Ms. [REDACTED]) (Exhibits M-4 and M-9).
- 6) On March 20, 2017, the Defendant signed Rights and Responsibilities indicating that he understood that SNAP benefits were to be used by himself to purchase food or seeds and that he could not buy, sell, trade, steal, or otherwise use SNAP benefits for monetary gain or other considerations (Exhibit M-4).
- 7) The Defendant was incarcerated at the [REDACTED] from January 29, 2018 to March 30, 2018 (Exhibit M-5).
- 8) During the Defendant's incarceration, nine transactions were made using his EBT card (Exhibit M-6).
- 9) On February 9, 2018, Ms. [REDACTED] used the Defendant's EBT card to complete a purchase at [REDACTED] (Exhibit M-8).
- 10) On July 24, 2018, Ms. [REDACTED] signed a written statement while in the presence of the Movant and indicated that she used the Defendant's EBT card during his incarceration to make food purchases totaling \$383.86. Ms. [REDACTED] statement reflected that she made food

purchases with his EBT card “as his contribution for staying with me [Ms. ██████]” (Exhibit M-9).

- 11) The Defendant has no previous history of established Intentional Program Violations (IPV) (Exhibit M-10).

### **APPLICABLE POLICY**

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

Administrative disqualification procedures 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 7 CFR §273.16(b)(1)(i) provides in part:**

Individuals found to have committed an intentional Program violation through an administrative disqualification hearing ... shall be ineligible to participate in the Supplemental Nutrition Assistance Program (SNAP) for a period of twelve months for the first intentional Program violation.

#### **Code of Federal Regulations 7 CFR §273.16(b)(13) provides in part:**

The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification. The disqualification period must continue uninterrupted until completed regardless of the eligibility of the disqualified individual’s household.

#### **Code of Federal Regulations 7CFR §273.16(c) provides in part:**

An Intentional Program Violation (IPV) consists of having intentionally 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 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 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. In defense of their request, the Movant argued that the Defendant trafficked his SNAP benefits by transferring his EBT card to an individual who was not included in his SNAP assistance group. 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.

The Movant had to prove by clear and convincing evidence that the Defendant affected an exchange of SNAP benefits issued and accessed via EBT card for consideration other than eligible food, either directly, indirectly, in complicity, or in collusion with others. The Defendant did not appear to refute the Movant's evidence. No evidence was entered to demonstrate that Ms. [REDACTED] was an authorized EBT cardholder for the Defendant.

Federal regulations provide that the Defendant's SNAP benefits may only be used by the Defendant and his household, or a person the household selects, to purchase food for the household. The evidence demonstrated that the Defendant signed in the presence of the Movant that he understood he could not use SNAP benefits for considerations other than to purchase food or seeds for himself; however, Ms. [REDACTED] statement reflected that the Defendant's EBT card was used by Ms. [REDACTED] during the Defendant's incarceration to contribute food to her home in consideration of his staying with her prior to incarceration. The Defendant violated regulations by allowing Ms. [REDACTED] who was not the Defendant's authorized card holder or a member of his AG, to use his EBT card. The evidence demonstrated that the Defendant intentionally provided an incorrect address—a location which Ms. [REDACTED] was staying—on his SNAP application and affected an exchange of SNAP benefits for consideration other than eligible food, either directly, indirectly, in complicity, or in collusion with Ms. [REDACTED]

**CONCLUSIONS OF LAW**

- 1) The evidence demonstrated that the Defendant intentionally provided an incorrect address on his SNAP application and affected an exchange of SNAP benefits with Ms. [REDACTED] during his January through March 2018 incarceration for considerations other than eligible food for the Defendant.

- 2) The Defendant committed an Intentional Program Violation (IPV).
- 3) The Defendant had no previous history of IPV penalty; therefore, a first offense 12-month disqualification penalty period should be imposed.

### **DECISION**

It is the finding of the State Hearings Officer that the Defendant committed an Intentional Program Violation. The Defendant will be disqualified from participation in the Supplemental Nutrition Assistance Program for twelve (12) months, effective November 1, 2019.

**ENTERED this 24<sup>th</sup> day of September 2019.**

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**Tara B. Thompson  
State Hearing Officer**