



**STATE OF WEST VIRGINIA
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

**Sherri A. Young, DO, MBA, FAAFP
Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

January 11, 2024



RE: [REDACTED] v. WV DoHS
ACTION NO.: 23-BOR-3321

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 Human Services. 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, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: Randy Miller, Esq., AAG

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

[REDACTED]

Appellant,

v.

Action Number: 23-BOR-3321

**WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES
BUREAU FOR FAMILY ASSISTANCE,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. This hearing was held in accordance with the provisions found in Chapter 700 of the Office of Inspector General Common Chapters Manual. This fair hearing was convened on January 9, 2024.

The matter before the Hearing Officer arises from the October 18, 2023 decision by the Respondent to deny Supplemental Nutrition Assistance Program (SNAP) benefit replacement.

At the hearing, the Respondent appeared by Randy Miller, Esq., Assistance Attorney General. Appearing as a witness for the Respondent was Ann Hubbard, Economic Service Supervisor. The Appellant appeared by counsel, [REDACTED] Legal Aid of West Virginia. All witnesses were sworn, and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Request for Replacement of Stolen Supplemental Nutrition Assistance Program (SNAP) and/or WV WORKS benefits (DFA-36B), date stamped received by the Department on October 16, 2023
- D-2 Copies of receipts from [REDACTED] dated March 22 and 24, 2023
- D-3 Copy of denial letter dated October 18, 2023
- D-4 Screen print of the Appellant's eRAPIDS case comments from March 24 through October 24, 2023

Appellant'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 Appellant is a recipient of SNAP benefits.
- 2) On March 24, 2023, the Appellant discovered that his SNAP benefits had been stolen from his EBT account. (Exhibit D-2)
- 3) On April 17, 2023, the Appellant called the Respondent's Customer Service Center (CSC) to report the theft of his SNAP benefits. (Exhibit D-4)
- 4) The Respondent did not send the Appellant a Request for Replacement of Stolen SNAP benefits form (DFA-36B) when he reported the theft.
- 5) At that time, no State Plan was in place on how to process the claims of skimming/cloning/phishing of EBT cards occurring across the state.
- 6) The Department of Human Services (DoHS) county offices were instructed to keep a list of those households reporting these types of theft.
- 7) There was no evidence to show that the Appellant was put on his local county's DoHS list of reported theft.
- 8) Sometime in July 2023, the state office in charge of these theft claims sent notification and a DFA-36B to those households who may have been affected. These notifications did not provide a due date for return of these forms.
- 9) On or about October 15, 2023, the Appellant went to his local DoHS office to inquire about the theft of his SNAP benefits and was given a DFA-36B at that time.
- 10) On October 16, 2023, the Appellant returned the completed DFA-36B to the local office.
- 11) On October 18, 2023, the Respondent issued a notice of denial for the replacement of his stolen SNAP benefits citing that the "household has submitted a claim outside of the timely reporting time period." (Exhibit D-3)

APPLICABLE POLICY

7 USC 2016a: EBT benefit fraud prevention, in part:

§2016a. EBT benefit fraud prevention

(a) Guidance; rulemaking

The Secretary shall-

(1) issue guidance to State agencies, on an ongoing basis, as informed by the process outlined in paragraph (4), that describes security measures that-

(A) are effective, as determined by the Secretary, in detecting and preventing theft of benefits, including through card skimming, card cloning, and other similar fraudulent methods;

(B) are consistent with industry standards for detecting, identifying, and preventing debit and credit card skimming, card cloning, and other similar fraudulent methods; and

(C) consider the feasibility of cost, availability, and implementation for States;

(2) promulgate regulations through notice-and-comment rulemaking to require State agencies to take the security measures described in the guidance issued under paragraph (1);

(3) not later than December 1, 2023, promulgate regulations (including an interim final rule) to require State agencies to implement procedures for the replacement of benefits consistent with subsection (b);

(4) coordinate with the Administrator of the Administration for Children and Families of the Department of Health and Human Services, the Attorney General of the United States, State agencies, retail food stores, and EBT contractors-

(A) to determine-

(i) how benefits are being stolen through card skimming, card cloning, and other similar fraudulent methods;

(ii) how those stolen benefits are used; and

(iii) to the maximum extent practicable, the locations where card skimming, card cloning, and other similar fraudulent methods are taking place;

(B) to establish measures, including equipment enhancements for retail food stores, to prevent benefits from being stolen through card skimming, card cloning, and other similar fraudulent methods; and

(C) to establish standard reporting methods for States to collect and share data with the Secretary on the scope of benefits being stolen through card skimming, card cloning, and other similar fraudulent methods; and

(5) not later than October 1, 2024, submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report that includes-

(A) to the maximum extent practicable, information on the frequency of theft of benefits and the location of those thefts, including benefits stolen through card skimming, card cloning, and other similar fraudulent methods;

(B) a description of the determinations made under paragraph (4)(A), the measures established under paragraph (4)(B), and methods established in paragraph (4)(C);

(C) a description of the industry standards described in paragraph (1)(B); and

(D) recommendations on how to consistently detect, track, report, and prevent theft of benefits, including benefits stolen through card skimming, card cloning, and other similar fraudulent methods.

(b) Replacement of benefits

The Secretary shall use funds appropriated under section 2027 of this title to require States to replace benefits that are determined by the State agency to have been stolen through card skimming, card cloning, or similar fraudulent methods, subject to the conditions that-

(1) the State agency shall submit to the Secretary not later than 60 days after December 29, 2022, for prior approval a plan for the replacement of stolen benefits that-

(A) includes appropriate procedures, as determined by the Secretary, for the timely submission of claims to, timely validation of claims by, and replacement issuance by the State agency that includes-

(i) a signed statement by the affected household on the benefit theft, consistent with the signature requirements and options provided by [section 2020\(e\)\(2\)\(C\) of this title](#);

(ii) criteria to determine if a submitted claim is valid;

(iii) procedures for the documentation of replacement issuances, including the submitted claims and findings from the validation;

(iv) the submission of data reports on benefit theft and replacement activity to the Secretary;

(v) procedures to inform households of their right to a fair hearing, consistent with those already established by [section 2020\(e\) of this title](#) and corresponding regulations concerning replacement issuances; and

(vi) the State agency's use and planned use of benefit theft prevention measures, including any additional guidance that may be issued under subsection (a)(1);

(B) includes appropriate procedures, as determined by the Secretary, for reporting the scope and frequency of card skimming affecting households within the State to the Secretary;

(C) upon approval shall be incorporated into the State plan of operation required under [section 2020\(e\) of this title](#); and

(D) the Secretary may approve after the date on which guidance is issued under subsection (a)(1);

(2) the replacement of stolen benefits for a household-

(A) shall not exceed the lesser of-

(i) the amount of benefits stolen from the household; or

(ii) the amount equal to 2 months of the monthly allotment of the household immediately prior to the date on which the benefits were stolen;

(B) shall not occur more than 2 times per Federal fiscal year per household by a single State agency; and

(C) shall only apply to benefits stolen during the period beginning on October 1, 2022, and ending on September 30, 2024;

(3) plans approved under paragraph (1) will remain in effect until the effective date of the rule promulgated pursuant to subsection (a)(3); and

(4) replacements of benefits under this section shall not be regarded as losses for the purpose of [section 2016\(e\) of this title](#) to the extent such replacements are made in accordance with an approved plan that complies with this subsection.

WV IMM, Chapter 12, §12.2.1.D SNAP BENEFIT REPLACEMENT DUE TO CARD SKIMMING/CLONING/ PHISHING:

§12.2.1.D.1, Replacement Procedures, In cases when SNAP benefits are stolen due to card skimming/cloning/phishing, the AG will be eligible for replacement of the actual value of loss, not to exceed the lesser amount of either the full amount of stolen benefits or the amount equal to two months of the household's monthly allotment immediately prior to the date when the benefits were stolen, if:

- The theft is reported within 30 days of the incident; and
- The AG's theft was verified by OIG; and
- The DFA-36B is completed, and a signature is obtained by the affected household.

Theft is considered stolen SNAP benefits via card skimming, card cloning and phishing. The client will complete a DFA-36B with a signature to start the claim process for benefit theft. This form will be sent to OIG for investigation. Once OIG investigates and confirms the theft was from card skimming/cloning/phishing, they will advise the worker of the amount they can replace via an email. The worker will then replace the lesser of the two instances listed above using the appropriate eligibility system procedures. The DFA-36B is retained in the case record along with the email from OIG containing the approval/denial. If the claim is found by OIG to be invalid, the worker will check the appropriate denial reason on the system generated notice (NCSB) and mail it to the client. The worker will retain the (NCSB) in the case record.

§12.2.1.D.3, Required Periods of Benefit Replacement, Workers must make available retroactive replacement of stolen benefits starting October 1, 2022, with authority for replacing benefits sunseting on September 30, 2024.

§12.2.2, When Snap Benefits Are Not Replaced, Replacement issuances are not provided in the following circumstances:

- When the issuance would normally be replaced, but the AG has not signed the DFA-SNAP-36 within 10 days of the date the client reports the loss. When the client does not report the benefit loss within the period of intended use or within 10 days of the specific incident.
- When benefits are issued into an EBT account.

EXCEPTION: When the EBT card is stolen before receipt by the client and benefits are fraudulently accessed, this situation must be reported to the DFA Economic Services Policy Unit for specific replacement procedures.

DISCUSSION

The Appellant is a recipient of SNAP benefits who discovered on March 24, 2023, that his benefits had been stolen from his EBT account. On April 17, 2023, the Appellant called the Respondent's Customer Service Center (CSC) to report the stolen benefits. The CSC did not send the Appellant a DFA-36B to submit a written claim for the stolen benefits. The Appellant testified that he had

not heard anything further from the Respondent. It was not until October 15, 2023, when the Appellant went to his local DoHS office that he was given a DFA-36B form to complete, which he returned the following day. On October 18, 2023, the Respondent sent the Appellant notification that his claim had been denied stating that the “household has submitted a claim outside of the timely reporting time period.” The Appellant appeals the denial of his claim.

The Respondent must show by a preponderance of evidence that it correctly followed policy in denying the Appellant’s request for the replacement of his stolen SNAP benefits.

Policy instructs that a claimant must complete a DFA-36B with a signature to start the claim process for benefit theft. This form will then be sent to the Office of Inspector General (OIG) for investigation. Once OIG investigates and confirms the theft was from card skimming/cloning/phishing, they will advise the worker of the amount they can replace via an email. The worker will then replace the lesser of the two instances listed in policy by using the appropriate eligibility system procedures. Policy also requires that the DFA-36B be submitted within 30 days from the date of the incident.

The testimony and evidence showed that the Appellant did report the incident within the 30-day time frame required by policy. However, the Respondent failed to send the Appellant an DFA-36B at that time. The case comments in the Appellant’s benefit case indicated that on July 14, 2023, a “claim form” was sent to the Appellant. However, the Respondent was not able to provide a copy of the July 14, 2023 notification letter and claim form that was purportedly sent to the Appellant. The Appellant credibly testified he never received any further information about his claim until he went to his local DoHS office on October 15, 2023. Moreover, the testimony showed that the Appellant was never notified that there was a time limit for submitting the DFA-36B.

The evidence showed that the Respondent failed to act by sending a DFA-36B to the Appellant when he verbally reported the theft of his SNAP benefits on April 17, 2023 to the CSC. The Appellant credibly testified that he attempted to follow up on his theft claim with the Respondent several times, but to no avail. Furthermore, the evidence failed to show that a DFA-36B was sent to the Appellant in July or that there was notification that there was a time limit to return the DFA-36B. Policy requires that a DFA-36B be completed in order to start the claim process for benefit theft. The Appellant did not have an opportunity to do so until October, when he visited his local office and was provided the DFA-36B.

Because the Respondent did not give the Appellant the opportunity to submit the required DFA-36B in a timely manner, the Respondent’s October 18, 2023 denial cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Policy requires that stolen SNAP benefits be reported within 30 days of the incident.
- 2) The Appellant discovered the theft of his SNAP benefits on March 24, 2023 and reported it to the Respondent’s Customer Service Center on April 17, 2023.

- 3) In order for the claim of stolen SNAP benefits to be investigated, a DFA-36B must be completed and returned to the Respondent.
- 4) No DFA-36B was provided to the Appellant upon his report of stolen SNAP benefits on April 17, 2023.
- 5) Once the Appellant visited his local office on October 15, 2023, a DFA-36B was provided to him which he submitted on October 16, 2023.
- 6) The Respondent incorrectly denied the Appellant's October 16, 2023 claim based upon untimely submission of the DFA-36B as he was not provided the opportunity to do so in a timely manner.

DECISION

It is the decision of the Hearing Officer to **REVERSE** the Respondent's October 18, 2023 decision to deny the Appellant's claim for the replacement of his stolen benefits. The case is **REMANDED** for the Appellant's claim to be processed.

ENTERED this 11th day of January 2024.

Lori Woodward, Certified State Hearing Officer