



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 6, 2005

Dear Mr. _____ :

Attached is a copy of the findings of fact and conclusions of law on your Administrative Disqualification Hearing held December 2, 2004.

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.

Intentional Program Violations shall consist of 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 relating to the use presentation, transfer, acquisition, receipt or possession of Food Stamp coupons. Individuals found to have committed an act of Intentional Program Violation will be ineligible for a specified time determined by the number of previous Intentional Program Violation disqualifications. (West Virginia Income Maintenance Manual § 20.2 and Code of Federal Regulations-7 CFR § 273.16)

The information submitted during the hearing fails to provide clear and convincing evidence that you allowed another individual to fraudulently use your EBT card.

Therefore, it is the decision of the State Hearing Officer to **reverse** the Agency's proposal to disqualify you from the Food Stamp Program based on an Intentional Program Violation.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Roger Kimble, SRI, DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an administrative disqualification hearing concluded on January 6, 2005 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This hearing was convened on December 2, 2004.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The **Food Stamp Program** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources. The purpose of the Food Stamp Program is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of an EBT card to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Roger Kimble, SRI, DHHR representative

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in the Food Stamp Program.

V. APPLICABLE POLICY:

7 CFR § 273.16 USDA Code of Federal Regulations
Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual Section 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 EBT receipts and WV EBT Production screen prints
- D-2 Compact disc containing store surveillance photos
- D-2a Store surveillance photo
- D-2b Store surveillance photo
- D-3 West Virginia Income Maintenance Manual Section 9.1
- D-4 West Virginia Income Maintenance Manual Section 20.2
- D-5 Copy of brochure regarding Mountain State EBT Card
- D-6 Rights and responsibilities signed by Defendant on August 22, 2003

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) A request for an Administrative Disqualification Hearing was received by the Board of Review from the Department's State Repayment Investigation unit. The Department contends that the Defendant has committed an Intentional Program Violation (trafficking) and is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of 12 months.
- (2) Notification of the December 2, 2004 hearing was mailed to the Defendant on October 25, 2004 via First Class mail as the Defendant is a current recipient of benefits through the Department.
- (3) The hearing convened as scheduled at 11:00 a.m. As of 11:15 a.m., the Defendant failed to appear. As set forth in regulations [7 CFR 273.16 (e) (4)], and State Policy (700 of Common Chapters Manual Appendix A Part F), the hearing was conducted without the Defendant in attendance.
- (4) According to evidence presented by the Department, several complaints were received concerning the Defendant's activity at Shop-n-Save in Fairmont. Managers and other store employees had been watching the Defendant, fearing he would hurt business as he has allegedly been approaching customers for money or asking them to use his EBT benefits in exchange for cash.
- (5) In August 2004, Shop-n-Save officials contacted the Investigations and Fraud Management Unit in Charleston to report what they believed to be Food Stamp misuse that allegedly occurred on August 9, 2004. It was believed that the Defendant had coerced an individual to use his EBT card to purchase food in exchange for cash. The Department reported that representatives from Shop-n-Save were contacted and had agreed to appear and testify on behalf of the Department, however, the Department was unable to produce any witnesses.
- (6) Shop-n-Save surveillance photographs (D-2, D-2a & D-2b) were submitted by the Department and are reported to show the Defendant and the individual who paid the Defendant cash entering the store together and making a purchase on August 9, 2004.
- (7) Exhibit D-1, receipts for the Defendant's EBT account, reveals that a total sale of \$79.66 was made at 10:17 a.m. on August 9, 2004, with \$69.37, the remaining account balance, deducted from the account.
- (8) West Virginia Income Maintenance Manual § 20.2 (D-4) states:
 "IPVs include making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt or possession of Food Stamps."
- (9) 7 CFR § 273.16 (e) (6) Code of Federal Regulations:
 The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an

Intentional Program Violation.

VIII. DECISION:

Policy provides that an Intentional Program Violation (IPV) for purposes of the Food Stamp Program will include making false or misleading statements, misrepresentations, concealing or withholding information, and committing any act that violates the Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt or possession of Food Stamps.

The testimony and documentation submitted by the Department clearly establishes that the Defendant entered Shop-n-Save on August 9, 2004, and made a purchase with his EBT card, however, the surveillance photographs fail to provide clear and convincing evidence that the Defendant engaged in Food Stamp trafficking by allowing another individual to fraudulently use his EBT card for a cash payment. Without eyewitness testimony to corroborate what the Department claims the pictures represent, the Department's evidence is only hearsay.

Therefore, it is the decision of the State Hearing Officer to **reverse** the Agency's proposal to disqualify the Defendant from participation in the Food Stamp Program based on an Intentional Program Violation.

IX. RIGHT OF APPEAL:

See Attachment

X. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29