



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

February 14, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 9, 2012 for the purpose of determining whether or not an Intentional Program Violation occurred.

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.

Eligibility for the Supplemental Nutrition Assistance Program (SNAP) is based on current policy and regulations. These regulations provide that an Intentional Program Violation consists of having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of the Food Stamp Act, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits (WV Income Maintenance Manual § 20.2 C(2) and 7 CFR Section 273.16 (c)].

The information submitted at your hearing failed to conclusively prove you sold your SNAP benefits.

It is the decision of the State Hearing Officer to **Reverse** the proposal of the Department to impose an Intentional Program Violation against you.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Andrew Petitt, Criminal Investigator

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

IN RE: -----,

Defendant

v.

ACTION NO.: 11-BOR-2625

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Movants

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing concluded on February 9, 2012 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.

II. PROGRAM PURPOSE:

The program entitled Supplemental Nutrition Assistance Program (SNAP) is administered by the West Virginia Department of Health and Human Resources.

The purpose of SNAP 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 EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

-----, Defendant

-----, Witness for Defendant

Andrew Petitt, Criminal Investigator

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

All participants testified by phone.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not Defendant committed an Intentional Program Violation.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 9.1
Code of Federal Regulations – 7 CFR §273.16

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2a SNAP Issuance History Screen (IQFS) from RAPIDS Computer System
- D-2b WV WORKS Issuance History Screen (IQAF) from RAPIDS Computer System
- D-3 Case Members History Screen (AQCM) from RAPIDS Computer System
- D-4 Electronic Benefit Transfer (EBT) Cardholder Information
- D-5 EBT Transaction History
- D-6 EBT Transaction History
- D-7 Rights and Responsibilities Form dated April 14, 2011
- D-8 Rights and Responsibilities Form dated October 3, 2011
- D-9 Statement from ----- dated November 29, 2011
- D-10 Appointment Letter dated December 2, 2011
- D-11 Notification of Intent to Disqualify and Hearing Request dated December 19, 2011
- D-12 WV Income Maintenance Manual § 9.1 A(2)h
- D-13 Code of Federal Regulations – 7 CFR §273.16
- D-14 WV Income Maintenance Manual § 20.2

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from Department of Health and Human Resources' Criminal Investigator, Andrew Petitt on December 27, 2011. The Department contends that Defendant has committed an Intentional Program Violation (IPV) and is recommending that she be disqualified from participation in SNAP for 12 months.
- 2) The Department received a complaint that Defendant had sold her SNAP benefits. An investigation was conducted and the Department obtained a statement from -----
----- on November 29, 2011 which reads in pertinent part (D-9):

I have never sold or given away Food Stamps. I have bought Food Stamps. I bought \$50.00 in Food Stamps for \$25.00 cash last month during the first part of October 2011. I bought the Food Stamps from [Defendant] who may have a different name. She lives in [REDACTED] the

second house on the left past the [REDACTED] I went to school with [Defendant]. I have never bought Food Stamps from anybody else.

When I bought FS from [Defendant] we went to the store together. I swiped her EBT card and she entered her pin. I spent them at [REDACTED] in [REDACTED]

- 3) On October 2, 2011 a purchase was made at [REDACTED] grocery store for \$53.84 with Defendant's EBT card (D-5). The Department contends Defendant allowed -----to use her EBT card on October 2, 2011 in exchange for \$25 cash. By selling her SNAP benefits, Defendant has violated the Food Stamp [SNAP] Act and has committed an Intentional Program Violation (D-12 and D-14).
- 4) Defendant testified she has never sold her SNAP benefits to anyone. Defendant stated ----- and her children came to her house on October 2, 2011 to stay overnight. Defendant stated ----- went to [REDACTED] with her to shop for groceries. Defendant stated ----- selected some foods her and her children to eat while they were staying with Defendant. Defendant stated she paid for the purchase with her EBT card and ----- and her children ate the food that was purchased that date. Defendant stated she has never received any money from -----.
- 5) -----, Defendant's husband, testified ----- walked to the store with Defendant on October 2, 2011. -----stated ----- and her children stayed the night at their house and left the next morning. -----stated they fed the children during the visit, with food purchased from their EBT account.

- 6) WV Income Maintenance Manual § 9.1 A(2)h states:

Persons who have been found guilty of an Intentional Program Violation (IPV) are disqualified [from SNAP] as follows:

- 1st offense: 1 year
- 2nd offense: 2 years
- 3rd offense: Permanent

- 7) Code of Federal Regulations- 7 CFR § 273.16 states:

An Intentional Program Violation 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 [SNAP] Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp coupons.

VIII. CONCLUSIONS OF LAW:

- 1) In order for an Intentional Program Violation to be established, it must be shown by clear and convincing evidence that the Defendant intentionally made a false or misleading statement or withheld or concealed facts from the Department or violated the Food Stamp [SNAP] act relating to the use, presentation, transfer, acquisition or receipt of SNAP benefits.
- 2) The Department alleges Defendant sold her SNAP benefits to ----- for \$25 cash in October 2011. Defendant's EBT transaction history corresponds with ----- statement that she bought approximately \$50 in SNAP benefits the first part of October 2011 that were used at [REDACTED]. However, the Department failed to provide clear and convincing evidence to prove Defendant sold her SNAP benefits to [REDACTED] during the October 2, 2011 transaction.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to impose an Intentional Program Violation against Defendant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th day of February 2012

**Kristi Logan
State Hearing Officer**