



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

**Earl Ray Tomblin
Governor**

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

March 8, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing held March 1, 2012 to determine whether you committed an Intentional Program Violation (IPV).

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, SNAP Regulations, or any State statute relating to the use presentation, transfer, acquisition, receipt or possession of SNAP benefits. 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 Section 20.2 and Code of Federal Regulations-7 CFR Section 273.16)

Documentation and testimony submitted at the hearing reveals that you allowed two unauthorized individuals to purchase food with SNAP benefits on your Electronic Benefits Transfer (EBT) card while you were incarcerated.

It is the decision of the State Hearing Officer that you committed an Intentional Program Violation and a 12-month disqualification penalty will be applied.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Danita Bragg, Criminal Investigator, DHHR

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 12-BOR-415

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

Movant,

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing for ----- . This hearing was conducted on March 1, 2012 in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources (WVDHHR).

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (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 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:

-----, Defendant

Tammy Hollandsworth, WVDHHR Repayment Investigator

Danita Bragg, WVDHHR Criminal Investigator (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 and should be permanently disqualified from participation in the Supplemental Nutrition Assistance Program.

V. APPLICABLE POLICY:

7 CFR Sections 273.11 and 273.16, USDA Code of Federal Regulations

WVDHHR Common Chapters Manual Section 740.11.D

West Virginia Income Maintenance Manual Sections 1.4.T(3), 20.2 and 20.2.C.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Code of Federal Regulations Sections 273.11b(3) and 4(B)

D-2 Code of Federal Regulations Section 273.16(b)

D-3 Combined Application and Review Form/Rights and Responsibilities signed by Defendant on September 30, 2011

D-4 Electronic Benefits Transfer (EBT) Transaction History for November 2011- December 8, 2011

D-5 Statement of ----- dated January 10, 2012

D-6 Statement of [REDACTED] dated January 10, 2012

D-7 DXRL Prison Match for ----- (date received December 5, 2011)

D-8 West Virginia Income Maintenance Manual Section 1.4.T(3)

D-9 West Virginia Income Maintenance Manual Section 9.1

D-10 West Virginia Income Maintenance Manual Section 20.2

D-11 West Virginia Income Maintenance Manual Section 20.6.A

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from WVDHHR Repayment Investigator Tammy Hollandsworth on January 19, 2012. The Repayment Investigator contends that the Defendant committed an Intentional Program Violation and recommends that he be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, for a period of 12 months.
- 2) WVDHHR Repayment Investigator Tammy Hollandsworth testified that she and Criminal Investigator Danita Bragg conducted an investigation on January 10, 2012, regarding multiple SNAP benefit replacement requests made by the Defendant. During the investigation, the investigators interviewed the Defendant and his grandmother, [REDACTED], and determined that the Defendant had misreported his heating source. The investigators also learned that the Defendant had been incarcerated at Central Regional Jail from October 19, 2011 through December 8, 2011 (Exhibit D-7). During this time period, the Defendant's Electronic Benefits Transfer (EBT) card had been used at various stores throughout the region, as revealed in Exhibit D-4, EBT Transaction History. As the Defendant was incarcerated and was the only reported member of his household, Investigator Hollandsworth contended that purchases made with his SNAP benefits could not have been used for his personal consumption. Upon questioning, the Defendant admitted to investigators that he had allowed his grandmother to use his EBT card during the period of his incarceration.

Investigator Hollandsworth obtained verification via video surveillance at [REDACTED] that the Defendant's girlfriend, -----, had made purchases with the Defendant's EBT card. It should be noted that ----- is a convicted drug felon and is, therefore, permanently disqualified from participation in the SNAP. When confronted with the information, Ms. Hollandsworth testified that the Defendant admitted giving ----- permission to use his EBT card for her personal needs while he was incarcerated. Investigator Hollandsworth contended that this action resulted in a misuse of SNAP benefits totaling \$381.03.

Investigator Hollandsworth provided Exhibits D-5 and D-6, a written transcript of statements made by the Defendant and his grandmother concerning his living situation and the use of his EBT card. The statements indicate that the Defendant lives in a camper behind his grandmother's home for the majority of the week, and also stays at his girlfriend's residence on some days.

The Defendant signed a Combined Application and Review Form with Rights and Responsibilities on September 30, 2011 (D-3), indicating that he understood his responsibilities in regard to the SNAP, as well as his requirement to provide complete and truthful information.

- 3) The Defendant testified that he allowed his grandmother and girlfriend to utilize his EBT card while he was incarcerated, but stated that he believed the SNAP benefits would be lost if they were not spent. He stated that he felt the benefits should not go to waste.

- 4) Code of Federal Regulations Section 273.11b(3) (Exhibit D-1) states that a household may allow any household member or nonmember to use its ID card to purchase food or meals, if authorized, **for the household** [emphasis added].
- 5) West Virginia Income Maintenance Manual Section 1.4.T(3) (Exhibit D-8) states that an Assistance Group may designate an authorized cardholder for EBT. The authorized cardholder has his own card and PIN, and accesses the EBT account without restriction.
- 6) West Virginia Income Maintenance Manual Section 20.2 (D-10):

When an AG (Assistance Group) has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.

- 7) West Virginia Income Maintenance Manual Section 20.2.C, 2 (D-10):

IPV's [sic] include making false or misleading statements, misrepresentations, 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...

Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (Assistance Group) members who committed the IPV...

The penalties are as follows: (Section 9.1A, 2, h) 1st Offense: 1 year (Disqualification).

- 8) WVDHHR Common Chapters Manual Section 740.11.D provides that 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 Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when an Assistance Group has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program

Violation or Intentional Program Violation claim. If it is determined that an Intentional Program Violation has been committed, an appropriate disqualification penalty is imposed.

- 2) The Defendant admittedly allowed his grandmother and girlfriend to utilize his EBT card for SNAP benefits while he was incarcerated. As the Defendant comprised a single-individual Assistance Group, neither his grandmother nor his girlfriend were members of his household or authorized cardholders for his benefits. In addition, his girlfriend is permanently disqualified from the SNAP due to a drug felony conviction.
- 3) Based on information provided during the hearing, the Department has correctly proposed the imposition of a 12-month SNAP disqualification penalty based on the commission of an Intentional Program Violation.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to impose an Intentional Program Violation penalty and disqualify the Defendant from the SNAP for a period of 12 months. The disqualification period will begin in May 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of March, 2012.

Pamela L. Hinzman
State Hearing Officer