



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Board of Review
P.O. Box 1736
Romney, WV 26757

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

Earl Ray Tomblin
Governor

April 2, 2012

Dear ---- :

Attached is a copy of the Findings of Fact and Conclusions of Law on your Supplemental Nutrition Assistance Program Administrative Disqualification Hearing held March 20, 2012. The purpose of this hearing was to determine whether or not you intentionally committed an Intentional Program Violation.

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 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. 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 which was submitted at your hearing was inconclusive to determine if you committed an Intentional Program Violation.

It is the decision of the State Hearing Officer to Reverse the proposal of the Department to apply a 12-month disqualification penalty based on an Intentional Program Violation.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Lori Woodward, Repayment Investigator

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

IN RE: ---- ----,

Defendant,

v.

ACTION NO.: 12-BOR-444

**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 a fair hearing 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 fair hearing was convened on March 20, 2012.

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

III. PARTICIPANTS:

Lori Woodward, Repayment Investigator

Presiding at the hearing was Eric L. Phillips , State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation and should be disqualified for one year from participation in the Supplemental Nutrition Assistance Program or SNAP.

V. APPLICABLE POLICY:

Code of Federal Regulations, 7 CFR § 273.16
Common Chapters Manual, Chapter 700
West Virginia Income Maintenance Manual, Chapter 20.2; Chapter 9.1.A.2.h

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 ██████████ County Sheriff's Office Evidence List
- D-2 Copy of Defendant's Electronic Benefits Transfer card
- D-3 SNAP Purchase receipts dated October 3, 2011 and October 4, 2011
- D-4 Computer printout of Electronic Benefit Transfer Card History
- D-5 Food Stamp Claim Determination
- D-6 Waiver of Administrative Disqualification Hearing for Trafficking Cases
- D-7 Rights and Responsibilities dated September 1, 2011
- D-8 West Virginia Income Maintenance Manual Chapter 20.2
- D-9 Common Chapters Manual 740.11
- D-10 West Virginia Income Maintenance Manual 9.1

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on January 24, 2012. The Department contends that the Defendant committed an Intentional Program Violation (IPV) in the form of trafficking by exchanging his Electronic Benefit Transfer (EBT) card for narcotics and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twelve (12) month period.
- 2) On January 26, 2012, a Notice of Scheduled Hearing was issued to the Defendant, via first class mail delivery, to his address at -----, West Virginia. The Department requested a continuance on the matter and a Rescheduling Notice was issued February 14, 2012 to the Claimant's address. These notices were not returned to the State Hearing Officer as undeliverable by the United States Postal Service.
- 3) The hearing convened as scheduled at 10:30 A.M., on the requested date, as of 10:45 A.M., the Defendant failed to appear. As set forth in the Code of Federal Regulations found at § 7 CFR 273.16 (e) (4) and State policy (West Virginia Department of Health and Human Resources Common Chapters Manual Chapter 740.20), the hearing was conducted without the Defendant in attendance.
- 4) The Department issued the Defendant Exhibit D-6, Waiver of Administrative Disqualification Hearing for Trafficking Cases. This exhibit documents in pertinent part:

It has been determined that ---- ---- violated federal/state regulations in the misuse of food stamp coupons by committing an act that constitutes a violation of the food stamp regulations. Therefore, a request for an administrative disqualification hearing for the purpose of proving the following allegation will be made. ---- did sell his EBT card on or about 10/3/11.

- 5) Ms. Lori Woodward, Repayment Investigator testified that the Investigations and Fraud Management, hereinafter IFM, unit of the Department of Health and Human Resources was contacted on December 13, 2011 by the [REDACTED] County Sheriff's Department. IFM was informed that a drug bust occurred on October 5, 2011 and authorities seized several thousands of dollars along with two Electronic Benefits Transfer cards, hereinafter EBT, from the alleged suspect's home. Exhibit D-1, [REDACTED] County Sheriff's Department Evidence List documents that Mountain State Card 5077 2000 1201 3515, cardholder ---- ---- was recovered from the living room floor of the alleged suspect's home. Additionally, Ms. Woodward's testimony indicated that two purchase receipts dated October 3, 2011 and October 4, 2011 were wrapped around the Defendant's EBT card. These receipts document the last four digits of the Defendant's EBT card and document a remaining balance of \$393.84 after the October 4, 2011 purchase. Ms. Woodward stated that information from [REDACTED] of the [REDACTED] County Sheriff's Department indicated that the alleged suspect stated that he received the EBT card benefits in exchange for narcotics.
- 6) Ms. Woodward presented Exhibit D-4, Computer printout of EBT Card History to demonstrate that the Defendant reported his card lost on October 5, 2011, the same day as the drug bust.
- 7) Ms. Woodward presented Exhibit D-7, Rights and Responsibilities to demonstrate that the Defendant acknowledged the Rights and Responsibilities associated with the receipt of SNAP benefits. Specifically, the Defendant acknowledged that he understood question #1 which documents in pertinent part the following:

I understand that SNAP benefits are to be used by my family and me to purchase food or seeds. I cannot sell my SNAP benefits or use someone else's benefits for myself. The SNAP benefits will not be used for any other purpose.

- 8) West Virginia Income Maintenance Manual, Chapter 9.1 indicates:

Persons who have been found guilty of an IPV are disqualified as follows:

- 1st Offense: 1 Year
- 2nd Offense: 2 Years
- 3rd Offense: Permanent

9) Common Chapters Manual 740.11.D states as follows:

Intentional Program Violation - For the purpose of determining through an Administrative Disqualification Hearing whether or not a person has committed an Intentional Program Violation, the following criteria will be used. 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 for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system access device.

10) Common Chapter Manual 740.22 states as follows:

Decision – The Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence that demonstrates that the defendant committed, and intended to commit, Intentional Program Violation as defined in Section 740.11 of this Chapter. The Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing. In rendering a decision, the Hearing Officer shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and court orders. The decision shall include reference to all pertinent law or policy. If the Hearing Officer rules that the defendant committed an Intentional Program Violation, he or she will include the length and the beginning date of the disqualification penalty.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern SNAP benefits require that a program violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) Evidence presented during the Administrative Disqualification Hearing does not meet the standard to conclude that the Defendant committed, or intended to commit, an Intentional Program Violation by trafficking his EBT card for narcotics. The fact that the Defendant's

EBT card was found in the possession of an alleged drug dealer in October, 2011 cannot be disputed; however, information as to how the alleged drug dealer obtained the EBT card is inconclusive. Information from the ██████████ County Sheriff's Department; specifically, ██████████ statement to the Repayment Investigator that the alleged drug dealer stated he received the EBT card benefits in exchange for narcotics is considered hearsay and is inconclusive to determine who provided the alleged drug dealer with the Defendant's EBT card. Therefore, there is no clear and convincing evidence to determine who exchanged the Defendant's EBT card with alleged drug dealer for narcotics and an Intentional Program Violation cannot be determined based on the evidence.

- 4) In accordance with SNAP policy and regulations, an Intentional Program Violation has been not been committed and a disqualification penalty cannot be applied.

IX. DECISION:

It is the decision of the State Hearing Officer to reverse the proposal of the Department to apply a 12-month disqualification penalty based on an Intentional Program Violation.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of April, 2012.

Eric L. Phillips
State Hearing Officer