



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
PO Box 29
Grafton WV 26354
January 29, 2007

Martha Yeager Walker
Secretary

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your Administrative Disqualification Hearing held November 16, 2006.

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. 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 (West Virginia Income Maintenance Manual § 20.2 and Code of Federal Regulations- 7 CFR § 273.16)

The information submitted at the hearing failed to establish that you committed and intended to commit an Intentional Program Violation. Evidence presented failed to meet the standard of "clear and convincing".

It is the decision of the State Hearing Examiner that an Intentional Program Violation was not proven and a 1 year disqualification penalty is not to be applied.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Board of Review
Sally Musick, DHHR, Investigator

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Defendant,

v.

Action Number 06-BOR- 2534

**West Virginia Department of Health and Human Resources,
Respondent.**

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from an Administrative Disqualification hearing concluded on January 22, 2007 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 November 16, 2006.

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

III. PARTICIPANTS:

Sally Musick, Investigator, DHHR

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question 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 § 1.2, 9.1, 10.3, 10.4, 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

D-1 – WV EBT Production System, Detail Journal Inquiry, 2/1/06- 9/5/06
D-2 - Case Comments, 9/7/05- 9/22/05
D-3 - Directory Assistance Plus
D-4 – Correspondence IFM to defendant
D-5 – Rights and Responsibilities section of review form, pages 1- 9 signed 8/19/05
D-6 – WVIMM 9.1
D-7 – Non- Financial Elig. Determination, 11/2/06
D-8 – WVIMM 20.2

VII. FINDINGS OF FACT:

1) An Administrative Disqualification Hearing requested by DHHR Investigator, Sally Musick July 26, 2006. Notification of November 16, 2006 hearing was mailed to defendant October 6, 2006. Notification was sent “restricted delivery” as the agency’s investigator indicated there was no active benefit case in the home. The receipt of delivery was returned, signed October 13, 2006. The hearing was scheduled to convene at 11:00 am. As of 11:15 the defendant had failed to appear. As set forth in regulations and in the notification to the defendant, the hearing was held without the defendant present.

2) During the hearing Exhibits as noted in Section VI above were submitted.

3) Testimony was heard from the agency’s investigator who was placed under oath.

4) Testimony on behalf of the agency reveals that the defendant’s father died 2/21/06 and Food Stamps of \$411 were issued after his death. A total of \$502.47 in FS was accessed after his death, \$297.07 in the [REDACTED] area (D-1). While the defendant’s father died 2/21/06, his family didn’t report his death to DHHR and FS continued to be authorized. Death was discovered 5/12/06 when the caseworker received notice from the Bureau of Medical Services. A review of deceased individual’s EBT card revealed that FS continued to be accessed after his death, first in the [REDACTED] area and then starting 3/31/06 in the [REDACTED] area (D-1). The defendant’s Food Stamp case had been closed 10/31/05 because she had moved to [REDACTED]. She would have been familiar with EBT card use and how to request a new PIN and to access benefits. According to WWW.daplus.us (D-3) the defendant lives in [REDACTED]. A review of the Detail Journal Inquiry in EBT indicates that the EBT account was accessed beginning 2/24/06 and as recently as 9/5/06. A review of transaction details for stores used after 3/13/06 indicates they were located in [REDACTED].

5) The agency alleged as follows: The defendant used her father's EBT card to access his benefits after his death. During this time she was not a member of his assistance group and not entitled to use his FS. These FS were used by someone in the [REDACTED] area who had access to obtaining his card upon his death and who was familiar with the EBT process and that person would have been his daughter, the defendant.

6) 7 CFR § 273.16 c, Code of Federal Regulations: Definition of intentional Program violation. 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 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).

7) 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. CONCLUSIONS OF LAW:

1) Intentional Program violations shall consist of having intentionally: 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. While the unauthorized use of an EBT card would constitute a violation of the Food Stamp Act, evidence fails to conclusively identify the defendant as the individual responsible for redeeming the EBT card in question.

2) The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member committed, and intended to commit, an Intentional Program Violation. The agency alleged that the defendant must be the person illegally using the EBT card based principally, it would seem, on the fact that she lived in the city in which the card was redeemed and was familiar with use of such a card. This presumption is neither clear nor convincing. The information presented consists largely of circumstantial evidence. While some seemingly logical inferences might be made based on this information, a finding of "clear and convincing evidence" which is the standard applied in affirming Intentional Program Violations, is not appropriate.

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, evidence that the defendant committed an Intentional Program Violation (IPV) was found to be unconvincing. As a result of the November 16, 2006 administrative hearing, **no disqualification penalty is to be applied.**

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED This 29th Day of January, 2007,

RON ANGLIN
State Hearing Examiner