



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 8, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on the Food Stamp Administrative Disqualification Hearing held March 6, 2007 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, 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 Section 20.2 and Code of Federal Regulations-7 CFR Section 273.16)

Testimony and evidence submitted at the hearing demonstrated that you violated Food Stamp Program regulations by using another individual's EBT card without authorization.

The State Hearing Officer finds that you committed an Intentional Program Violation and **upholds** the Department's proposal to disqualify you from participation in the Food Stamp Program for 12 months.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Lynn McCourt, Repayment Investigator, DHHR

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

_____,

Defendant,

v.

Action Number: 07-BOR-632

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

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a hearing concluded on March 8, 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 fair hearing was convened on March 6, 2007.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The program entitled Food Stamps is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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:

_____, Defendant

_____, witness for Defendant

_____, witness for Department

_____, mother of _____ and witness for the Department

Lynn McCourt, State Repayment Investigator, DHHR

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

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Defendant committed an Intentional Program Violation and should be disqualified from participation in the Food Stamp Program for a period of one (1) year.

V. APPLICABLE POLICY:

7 CFR Section 273.16 USDA Code of Federal Regulations
Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual Sections 1.3B, 9.1 and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Department notifications and correspondence
- D-2 Food Stamp Rights and Responsibilities signed by Defendant on April 7, 2006 and Benefit Recovery Referral information
- D-3 West Virginia Income Maintenance Manual Sections 1.3B, and 20.2
- D-4 Hearing Summary
- D-5 EBT Detail Journal Inquiry

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing (D-1) was received by the Board of Review from State Repayment Investigator Lynn McCourt on January 24, 2007. Ms. McCourt contends that the Defendant committed an Intentional Program Violation and recommends that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year.
- 2) Information submitted by the Department indicates that the Defendant allegedly used _____'s Electronic Benefits Transfer (EBT) card, without permission, to obtain and use Food Stamps in August 2006.
- 3) The Claimant had signed a DFA-RR-1 Rights and Responsibilities form (D-2) on April 7, 2006 and checked "yes" to the following information, which states, in part:

Question 1- I understand that Food Stamp benefits are to be used by my family and me to purchase food or seeds. I cannot sell my Food Stamp benefits or use someone else's benefits for myself.

Question 42- Also, it is understood that any person who obtains or attempts to obtain welfare benefits from DHHR by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device can be charged with fraud.

- 4) Mr. _____, who has a child with the Defendant, was incarcerated from August 8, 2006 until November 11, 2006. The Defendant was Mr. _____'s girlfriend prior to his incarceration, but was not included in his Food Stamp case. The Defendant's mother testified that she did not give the Defendant her son's EBT card and had cancelled his Food Stamp benefits two days after his incarceration. She testified that the card, which had been credited with \$152 in Food Stamps on August 8, 2006, was in a drawer at her residence and she did not use it. She testified that the Defendant came into her residence when she dropped off her granddaughter for visits. Mr. _____ also testified that he did not give the Defendant permission to use his card. His mother testified that State Police investigated the incident, were unable to locate the EBT card, and were unable to obtain videotaped store transactions as the tapes are kept for a limited period of time.
- 5) The Defendant testified that she never entered Mr. _____'s mother's residence when she dropped her child off for visits. She testified that Mr. _____'s mother gave her the EBT card, which she used on two occasions to purchase baby formula at Wal-Mart. She testified that she then returned the card to Mr. _____'s mother.
- 6) Exhibit D-5 reveals that several transactions were made with Mr. _____'s EBT card from the period of August 10, 2006 to September 11, 2006. Transactions took place at Wal-Mart on August 19, 2006 (\$30.24), August 21, 2006 (\$20.79) and August 22, 2006 (\$1.18). Other transactions were made at Dollar General Store, [REDACTED] Mart, Speedway, Rich Oil, [REDACTED] Mart and [REDACTED] Mart.
- 7) West Virginia Income Maintenance Manual Section 1.3B (D-3) states:

The DFA-RR-1 is required each time an OFS-2 or OFS-5 is completed. The client must read, or have read to him, all the statements preceding his signature before signing the form. He must also indicate his understanding of, or agreement with, each statement by checking the appropriate block inside the statement.

The Worker must provide any explanation and information the client needs to understand the statements. After completing all applicable sections, the client signs the form in the presence of the Worker. Failure to sign the form results in ineligibility.

- 8) West Virginia Income Maintenance Manual Section 20.2 (D-3) states:

Intentional Program Violations 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 individual(s) who is found to have committed an IPV is ineligible to participate in the Program for a specified time, depending on the number of offenses committed.

An IPV can only be established in the following ways:

- The client signs an IG-BR-44, Waiver of Rights, to an ADH; or
- By an ADH decision; or
- By court decision.

Once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV.

If a court fails to impose a disqualification period, the Department imposes the appropriate penalty as indicated in Section 9.1 A, 2, g. If the court imposes a sanction that differs from those in Section 9.1 A, 2, g, the court-ordered sanction is applied.

- 9) West Virginia Income Maintenance Manual Section 9.1 A, 2, g states that the penalty for a First Offense IPV is one (1)- year disqualification.
- 10) Common Chapters Manual 700, Appendix A, Section B, 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.
- 11) 7 Code of Federal Regulations Section 273.16 states:

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).

- 12) Common Chapters Manual 700, Appendix A, Section G (The Decision) states that the State Hearing Officer 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 as defined in Section B of Appendix A.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that if it is determined that an Intentional Program Violation has been committed, a disqualification penalty is imposed upon the household member. For a first offense, the penalty is one (1) year.
- 2) Policy requires the State Hearing Officer to base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the Defendant committed, and intended to commit, an Intentional Program Violation.
- 3) The Defendant admitted that she used Mr. _____'s EBT card on two occasions at Wal-Mart.
- 4) The Defendant was not included in Mr. _____'s Food Stamp case and was not authorized to use the card.
- 5) Based on information provided during the hearing, the Hearing Officer finds clear and convincing evidence to determine that the Claimant committed an Intentional Program Violation.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to disqualify the Defendant from the Food Stamp Program for a period of one (1) year based on the commission of 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 8th Day of March 2007.

**Pamela L. Hinzman
State Hearing Officer**