



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

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 30, 2008

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 17, 2008 for the purpose of determining whether or not an Intentional Program Violation occurred requiring a repayment of an overissuance of Food Stamps.

In arriving at a decision, the State Hearings 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 Food Stamp program is based on current policy and regulations. Some of these regulations state as follows: 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 ' 20.2 and Code of Federal Regulations - 7 CFR ' 273.16).

The information which was submitted at your hearing revealed that you violated the Food Stamp Act by purchasing food for your household with another household's Food Stamps.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to impose an Intentional Program Violation and repayment of Food Stamps.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review  
Danita Bragg, Repayment Investigator

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

\_\_\_\_\_,  
**Defendant,**

**v.**

**Action Number: 08-BOR-1827**

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

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on September 17, 2008 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 September 17, 2008.

**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 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:**

Danita Bragg, Repayment Investigator

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

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether an Intentional Program Violation occurred requiring a repayment of Food Stamps.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual § 20.2  
Code of Federal Regulations § 273.16

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

DHS-1 Food Stamp Claim Determination Form  
DHS-2 Electronic Benefit Transfer Transaction History for \_\_\_\_\_  
DHS-3 Rights and Responsibilities Form dated May 2, 2008  
DHS-4 Statement from \_\_\_\_\_ dated July 8, 2008  
DHS-5 West Virginia Income Maintenance Manual § 20.2 C(2)  
DHS-6 Code of Federal Regulations § 273.16

**Defendant's Exhibits:**

D-1 None

**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' State Repayment Investigator, Danita Bragg, on July 31, 2008. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of one (1) year and a repayment of Food Stamps received for which she was not eligible for.
- 2) Defendant was notified by a Notification of Intent to Disqualify letter dated July 9, 2008 that the Department had reason to believe she intentionally violated the Food Stamp program by spending the Food Stamps deposited on another person's Electronic Benefit Transfer (EBT) card for her own use. The result was an overpayment of \$57.57 in Food Stamps.
- 3) Defendant contacted the Department on June 30, 2008 and spoke with a supervisor, Susan Godby. Defendant told Ms. Godby that she had used \_\_\_\_\_'s EBT card as reimbursement for providing Ms. \_\_\_\_\_ with transportation. Defendant reported that Ms. \_\_\_\_\_ gave her the EBT card and her pin number.
- 4) Danita Bragg, Repayment Investigator, spoke with Defendant on July 1, 2008. Again, Defendant admitted to using Ms. \_\_\_\_\_'s EBT card as payment for the gas she used driving Ms. \_\_\_\_\_ around. Defendant stated she used the EBT card at \_\_\_\_\_ in \_\_\_\_\_ and spent about \$58.

- 5) Ms. Bragg presented into evidence a statement obtained from Ms. \_\_\_\_\_ dated July 8, 2008 which read (DHS-4):

\_\_\_\_\_ did not have any food in her house. My son ran around with \_\_\_\_\_'s son \_\_\_\_\_. My son said there was no food. \_\_\_\_\_ kept saying she didn't know what to do. Her husband went to work for a trucking company and she got \$500 unemployment every 2 weeks for him too. I didn't know all of this at the time. She was selling things her computer, bed room suite for my boy, entertainment center, etc. Dispute over these items [sic].

I did check and she had no food. She kept saying she guessed she wouldn't be able to eat until she got her Food Stamps. She asked me to loan her some Food Stamps. I told her I needed to think about it. I left the house and left the card with my husband. I mentioned to him that \_\_\_\_\_ was down there with no food and I felt sorry for them.

While I was gone \_\_\_\_\_ told him I had said she could take the card and get groceries. My husband gave her the card and pin number. \_\_\_\_\_ was supposed to pay me back when she got her stamps. \_\_\_\_\_ was supposed to use \$20. She spent \$35.65 on the 3<sup>rd</sup> of June and then used it again 6/5/08 for \$21.92. The total is \$57.57. \_\_\_\_\_ has never paid me back.

I don't use to EBT card to pay for my transportation [sic]. I felt sorry for \_\_\_\_\_. Really I felt sorry for the kids. They would hang out at our house and eat. In a way, I did let her use the card – I told my husband about the situation and left the card with him. I knew it was illegal to sell you stamps but I didn't know it was illegal or wrong to let someone borrow your stamps and pay you back with using theirs.

- 6) Ms. Bragg also presented the EBT transaction history for Ms. \_\_\_\_\_ into evidence (DHS-2). This showed a transaction on June 3, 2008 for \$35.65 at \_\_\_\_\_ in \_\_\_\_\_ WV and another transaction on June 5, 2008 for \$21.92.
- 7) The Department contends that Defendant has been a Food Stamp recipient since April 2007 and has signed several Rights and Responsibilities forms. Defendant was aware of the penalties for misusing the EBT card.
- 8) West Virginia Income Maintenance Manual § 20.2 C(2) states:

IPV's 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.

IPV claims must be established for trafficking-related offenses. Claims arising from trafficking-related offenses are the value of the trafficking benefits as determined by the individual's admission, adjudication, or documentation that forms the basis of the trafficking determination. Buyers and sellers of trafficked benefits are equally responsible for the

claim.

- 9) Code of Federal Regulations- 7 CFR ' 273.16 states:

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 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 statement, withheld or concealed facts from the Department, or violated the Food Stamp Act related to the use, presentation, transfer, acquisition, receipt or possession of Food Stamps.
- 2) By Defendant's own admission, she used another household's EBT card to purchase food for her household. This clearly violates the Food Stamp Act. As a result, Defendant used Food Stamps she was not entitled to receive. Defendant will be required to repay the \$57.57 in Food Stamps she used from another household's EBT card.

#### **IX. DECISION:**

It is the decision of the State Hearing Office to **uphold** the Department's proposal of an Intentional Program Violation and repayment of Food Stamps of \$57.57. Repayment arrangements must be made, as specified on the Notice of Food Stamp overissuance, within 30 days from the date of this decision.

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 30<sup>th</sup> Day of September, 2008.**

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**Kristi Logan  
State Hearing Officer**