



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 28, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the SNAP (Food Stamp) Administrative Disqualification Hearing held August 18, 2009 for the purpose of determining whether you committed an act of 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.

Eligibility for the SNAP (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, trafficking, or possession of Food Stamp coupons or authorization cards. 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 submitted at the hearing failed to demonstrate convincingly that you committed an Intentional Program Violation by selling your EBT card to another individual for financial gain.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to apply a two (2) year Food Stamp disqualification penalty against you based on an Intentional Program Violation.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/Christine Allen, Wood DHHR

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

-----,

Defendant,

v.

Action Number: 09-BOR-1339

**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 an Administrative Disqualification Hearing concluded on August 28, 2009 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 August 18, 2009.

II. PROGRAM PURPOSE:

Supplemental Nutrition Assistance Program (SNAP)

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:

Christine Allen, State Repayment Investigator, DHHR

-----, Department witness

----- , Department witness

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

It should be noted that Steve Baisden, State Hearing Officer, observed the hearing.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Defendant committed an intentional program violation and should be disqualified for one year 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, & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 ADH Hearing Summary
- D-2 Food Stamp Claim Determination
- D-3 Food Stamp Issuance History form from RAPIDS
- D-4 Food Stamp Allotment Determination forms from RAPIDS
- D-5 Case Members History form from RAPIDS
- D-6 Fraud Referral Form dated April 20, 2009
- D-7 Receipt dated May 7, 2009
- D-8 Witness Statement signed May 13, 2009 - Rowe
- D-9 Witness Statement signed May 13, 2009 -
- D-10 Witness Statement signed May 21, 2009 - Morgan
- D-11 EBT Administration System Transaction History
- D-12 Combined Application Form (CAF) dated April 20, 2009
- D-13 Rights and Responsibilities form dated April 20, 2009
- D-14 Notification letter dated May 13, 2009
- D-15 Waiver of Administrative Disqualification Hearing form
- D-16 FNS Electronic Disqualification Recipient System Screen
- D-17 Notification of Intent to Disqualify forms
- D-18 WV Income Maintenance Manual Section 1.2
- D-19 WV Income Maintenance Manual Section 14.1
- D-20 WV Income Maintenance Manual Section 20.1
- D-21 Code of Federal Regulations §7CFR273.16

Claimant's Exhibits:

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' (Department) on June 9, 2009. The

Department contends that the Defendant has committed an act that constitutes a violation of the Food Stamp Act, the Food Stamp Regulations and State Statute by selling his inactive Electronic Benefits Transfer (EBT) card to an individual for thirty dollars (\$30.00). The Department is recommending that the Defendant be disqualified from participation in the Food Stamp Program for a period of two (2) years.

- 2) The Hearing Officer sent the original hearing notice to the Defendant on June 12, 2009 for a July 30, 2009 hearing. The hearing was rescheduled and another hearing notice was mailed to the Defendant on July 28, 2009 for the August 18, 2009 hearing. The notices were sent via regular First Class Mail delivery as the Defendant currently receives benefits from the Department at the listed address and his address has been validated.
- 3) The hearing convened as scheduled at 9:00 a.m., and as of 9:15 a.m., the Defendant failed to appear. As set forth in regulations [7 CFR 273.16 (e) (4)], and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, 740.20), the hearing was conducted without the Defendant in attendance.
- 4) The Department presented evidence (D-12) to show the Defendant completed a SNAP application interview on April 20, 2009, at which time he signed the Rights and Responsibilities form (D-13). He checked "yes" to question number one (1) on page one (1) of this document indicating 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. I understand that I may not use my EBT SNAP benefits to purchase food on credit. This means I cannot pay for food already purchased or food to be received in the future.

- 5) The Department contends that the Defendant sold his EBT card to -----for thirty dollars (\$30.00) on May 1, 2009 and that this act constitutes a violation of the Food Stamp Act, Food Stamp Regulations, and State Statute.
- 6) The Department presented evidence to show (D-7) that -----returned the Defendant's EBT card to the Department on May 7, 2009. The evidence also shows (D-6) that the number on the card returned by this individual was 5077-2000-0419-3937. The evidence shows this card (D-11) was inactive for the period in question. The Department's evidence (D-11) shows that when the Defendant's SNAP application dated April 20, 2009 was approved, he was issued a new EBT card with number 5077-2000-0636-6556. There were no benefits available on the card returned to the Department on May 7, 2009.
- 7) The Department presented written evidence in the form of a certified written statement (D-8) from -----dated May 13, 2009 in which she provided the following pertinent information:

I, -----, live in [REDACTED] in [REDACTED] County. On about 5/1/09, --- -- came to my home. ----- asked me if I had any Lortab 7.5 or Xanax he could trade his food stamps for. I told him my pills were for myself. Then he asked me if I had any money he could trade. I told him I had \$30.00. He said I could have \$35.00 off his card. I gave him \$30.00 and he said to meet him at

his trailer on the 4th when his food stamps go on his card. I asked for the PIN and he wouldn't give it to me. If I met him at his trailer, we would go to the store together. He would put in the PIN then. My daughter ----- and I went to his trailer on the morning of the 4th and he was not there. We could not find him. We came home on 5/6/09 and I dropped off the EBT card ----- gave me at the [REDACTED] County DHHR. I turned in the EBT card he gave me because I was tired of trying to track him down.

The Department's witness, -----, provided oral testimony during the hearing. Her testimony during the hearing changed somewhat as she stated she bought the card because she wanted to get the Defendant into trouble, and she never intended to use the card. However, she also admitted to trying to track him down on the agreed date and time. She explained that she didn't try that hard to find him that day. This witness's testimony is contradictory in nature and questionable.

- 8) The Department presented a written certified statement (D-9) from -----, who is ----- daughter. In this statement, the author provides that the Defendant did try to buy drugs from her mother, and then sold her his EBT card for thirty dollars (\$30.00). She also details their attempts to find the Defendant on April 4, 2009 in order to obtain the agreed upon food in the amount of thirty five dollars (\$35.00). She provided oral testimony during the hearing which essentially corroborates her earlier written statement. She provided that they really needed the food and could not find the Defendant in order to obtain the benefits. This witness appeared to be somewhat medicated, taking long pauses during her testimony and appearing to be somewhat lost and unable to speak. Both witness statements (D-8, D-9) were obtained at a time when both women were present, allowing both women to hear the other's recollection of events.
- 9) The Department presented evidence to show (D-10) that the Defendant provided a written certified statement on May 21, 2009. In his statement, the Defendant provides that he previously lived in [REDACTED] for a time and when he moved back to West Virginia he applied for food stamps. He provides that he has received replacement cards from the Department approximately three (3) times in the past. He recalled losing his card once but does not remember when. Two other times the card either didn't work or was broken. He estimated this occurred over a four (4) year period. He stated he does not trade his food stamps.
- 10) The Department contends that the Defendant intentionally sold his EBT card to the witness in order to obtain thirty dollars (\$30.00) cash with the intent to allow the witness to obtain SNAP benefits by using his card.
- 11) West Virginia Income Maintenance Manual ' 20.2 (C) (2) states in pertinent part:

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.

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: (' 9.1, A, 2, h) 1st Offense: 1 year (Disqualification)

- 12) 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.
- 13) Common Chapters Manual 700, Appendix A, Section G, 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 this Appendix.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern the SNAP (Food Stamp) program provide that an Intentional Program Violation (IPV) has occurred when an individual is found to have trafficked his SNAP benefits.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an IPV. The evidence in this matter fails to show clearly and convincingly that the Defendant sold his EBT card for financial gain. The testimony of the Department's witnesses is questionable and unreliable, and no other evidence has been provided to support the Department's contention. Although the Department's witness clearly had possession of the EBT card, there is no clear evidence to support that she obtained the card in the manner claimed.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification is **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of August, 2009.

**Cheryl Henson
State Hearing Officer**