



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St.
Charleston, WV 25313
304-746-2360 Ext 2227

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 10, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 2, 2008. Your hearing was based on the Department of Health and Human Resources' claim that you had committed an intentional program violation of the Food Stamp program.

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: 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 regulations, or any statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamp benefits. (Section B. Appendix A, Chapter 700 of Common Chapters Manual) Individuals found to have committed an intentional program violation shall be ineligible to participate in the Food Stamp Program for a fixed period of time as explained in section 9.1,A,2,g of the WV Income Maintenance Manual and 7 CFR Section 273.16 .

The information submitted at your hearing did not conclude that you committed an intentional program violation by allowing another person to use your Electronic Benefit Transaction (hereinafter EBT) card or have access to the card and pin number.

It is the decision of the State Hearings Officer to **reverse** the proposed action of the Department to apply a Food Stamp sanction to your case for an intentional program violation.

Sincerely,

Jennifer Butcher State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Christina Saunders, Repayment Investigator

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

-----,

Claimant,

v.

Action Number: 08-BOR-1830

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

Respondents.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a hearing concluded on March 10, 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 Administrative Disqualification hearing was convened on September 2, 2008 on a request, filed by the agency on July 31, 2008.

It should be noted here that any adverse action of the agency has been postponed pending a hearing decision.

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

III. PARTICIPANTS:

-----, Claimant
Christina Saunders, Repayment Investigator

Presiding at the hearing was Jennifer Butcher, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not it was shown by clear and convincing evidence that the defendant has committed an intentional program violation.

V. APPLICABLE POLICY:

Code of Federal Regulations Section 273.16
West Virginia Maintenance Manual Chapter 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Referral from Investigations and Fraud Management dated May 2, 2008
- D-2 Rights and Responsibilities statement , item number one (1)
- D-3 Federal Regulations Code Section 273.16c
- D-4 Waiver of Administrative Disqualification Hearing
- D-5 West Virginia Income Maintenance Policy 20.2
- D-6 West Virginia Income Maintenance Policy 20.2.E and F

VII. FINDINGS OF FACT:

- 1) On May 2, 2008, the Department received a complaint call that the defendant had given her EBT card to ----- to buy groceries in lieu of three (3) weeks past due rent.
- 2) In May of 2008, the Claimant allegedly gave her EBT card and her pin number to ----- to purchase food in lieu of rent for the three (3) weeks that the Claimant had been staying with her and eating with the family.
- 3) The Claimant testified that she was asked by the mother of ----- to borrow her card to get the telephone number off the back of the card so she could call and check on ----- card. The Claimant had left the card on her dresser the next morning before she went to work and it was returned that evening when she came home from work. The next day the Claimant used the card twice at a convenient store and then her son used the card to buy milk at the same store and discovered that all the money was gone from the card. The Claimant stated that she knew there was money in the account during the second and third purchase of that day and could not understand where the money had gone.
- 4) The Department could not provide any evidence as to where the Claimant's card was used on the day in question. The Claimant stated that she used the card twice at the [REDACTED] station and the card was used at the [REDACTED] and again at the [REDACTED] station. The Claimant stated she had the card with her at work the day the transaction occurred at

- 5) **West Virginia Income Maintenance Manual Policy § 1.4, states:** Individuals who have committed an Intentional Program Violation (IPV) are ineligible for a specified time determined by the number of previous (IPV) disqualifications.
- 6) **West Virginia Income Maintenance Manual Policy § 20.2 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.
- 7) **According to Common Chapters Manual, Chapter 700, Appendix A, Section B,** an Intentional Program Violation consists of having intentionally made a false statement, or misrepresented, concealed or withheld facts, or committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons.
- 8) **According to policy in West Virginia Income Maintenance Manual Section 9.1,A,2,g,** the disqualification penalty for having committed an Intentional Program Violation is twelve (12) months for the first violation, twenty-four (24) months for the second violation, and permanent disqualification for the third violation.
- 9) **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).
- 10) **1977 FOOD STAMP Act, Sec. 15.**

VIOLETIONS AND ENFORCEMENT

- (c) Whoever presents, or causes to be presented, coupons for payment or redemption of the value of \$100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act shall be guilty of a felony

upon conviction thereof.

VIII. CONCLUSIONS OF LAW:

- 1) The transfer of Food Stamp benefits for payment clearly violates the Food Stamp Act of 1977 as provided under Section 15 of that Act. Chapter 20.2 of the Income Maintenance Manual clearly states that an Intentional Program Violation includes any act that violates the Food Stamp Act of 1977, but the Department did not provide any evidence to substantiate the allegation other than a statement from the alleged receiver of the benefits and the hearsay rule was applied. Because the provider of the statement was not present to be cross examined by the accuser, the evidence could not be considered.
- 2) Evidence and testimony clearly does not support the allegation that the defendant has committed an Intentional Program Violation by selling or trafficking her Food Stamp benefits in May, 2008.

IX. DECISION:

It is the finding of this Hearing Officer that the defendant did not commit an Intentional Program Violation (IPV). It is the ruling of this Hearing Officer to **reverse** the Department's proposed action to impose a ten (10) year sanction for this IPV.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 11th Day of March, 2009.

**Jennifer Butcher
State Hearing Officer**