



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

August 7, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Supplemental Nutritional Assistance Program (SNAP / Food Stamp) Administrative Disqualification Hearing held July 16, 2009 for the purpose of determining whether or not an Intentional Program Violation (IPV) was committed by you.

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 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 submitted at the hearing reveals that you committed an Intentional Program Violation when you purchased food with your SNAP EBT benefits to repay a financial debt.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. This disqualification will begin effective October 1, 2009.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Teresa Smith, SRI, DHHR

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

-----,

Defendant,

v.

Action Number: 09-BOR-716

**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 an Administrative Disqualification Hearing concluded on August 7, 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 July 16, 2009.

It should be noted that the Claimant is a current recipient of Medicaid benefits through the Department.

II. PROGRAM PURPOSE:

The purpose of the **SNAP 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:

Teresa Smith, State Repayment Investigator, DHHR

Presiding at the Hearing was Thomas E. Arnett, 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 the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in the Food Stamp (SNAP) Program.

V. APPLICABLE POLICY:

7 CFR ' 273.16 USDA Code of Federal Regulations

West Virginia Department of Health and Human Resources, Common Chapters Manual, Chapter 740

West Virginia Income Maintenance Manual, Chapter 1.2, 2.2, 9.1, & 20

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHS-1 Combine Application and Review Form (CAF) & The Rights and Responsibilities (DFA-RR-1), signed by the Defendant on 12/30/08
- DHS-2 JPMorganChase Cardholder Information for the Defendant
- DHS-3 Notification of Intent to Disqualify, dated 1/9/09
- DHS-4 WV Income Maintenance Manual, Chapter 1.2, 1.4, 9.1, 20.1 & 20.2
- DHS-5 JPMorganChase - EBT Administration / Transaction History
- DHS-6 JPMorganChase – Card History

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from the Department on February 18, 2009. The Department contends that the Defendant has committed an Intentional Program Violation and is recommending that the Defendant be disqualified from participation in the SNAP (Food Stamp) Program for a period of one (1) year.
- 2) Notification of the July 16, 2009 hearing was mailed to the Defendant on May 19, 2009 via First Class Mail as the Defendant is a current recipient of benefits and resides at an address known to be good by the Department.
- 3) The hearing convened as scheduled at 10:00 a.m., and as of 10:15 a.m., the Defendant failed to appear. As set forth in the Code of Federal Regulations found at §7 CFR 273.16 (e) (4), and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 740.20), the hearing was conducted without the Defendant in attendance.
- 4) The Department's representative purported that she received a phone call on January 9, 2009 from an individual alleging the Defendant made a large purchase of food at [REDACTED] with his SNAP/EBT card benefits on the evening of January 8, 2009. The reporter indicated that the large purchase of food was then given to an individual as payment for a financial debt owed by

the Defendant. The caller provided the card number as well as the pin number used for the purchase.

- 5) The Department's representative further testified that she checked the EBT system and verified the large purchase at [REDACTED] on January 8, 2009 (Exhibit DHS-1 confirms a transaction occurred on 1/8/09 at 5:34 pm in the amount of \$194.31) and noticed that the Defendant reported his EBT card stolen on January 9, 2009 (See Exhibit DHS-6). According to the information included in exhibit DHS-5, the Defendant then attempted to make a purchase at Wal-Mart on January 30, 2009 with the EBT card he reported stolen on January 9, 2009. The Department noted that only the Defendant would have access to the pin number required to access the EBT account. The Department indicated that the Defendant has had his EBT card replaced/reissued twelve times during the period January 1, 2009 through July 6, 2009.
- 6) Department's Exhibit DHS-1, that includes the Rights and Responsibilities form (DFA-RR-1) completed and signed by the Defendant on the day of application/review (12/30/08). The Defendant marked "yes" to item #1 and #4 which states:

#1

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.

#4

I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not received Food Stamp benefits as follows: First Offense – one year; Second Offense – two years; Third Offense- permanently. In addition, I will have to repay any benefits received for which I was not eligible.

By signing the DFA-RR-1, the Defendant certified that he read, understood, and accepted the rights and responsibilities included therein.

- 7) West Virginia Department of Health and Human Resources, Common Chapters Manual 740.11.D states as follows:

Intentional Program Violation - 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 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.

- 8) West Virginia Income Maintenance Manual ' 20.2 (C) (2):
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), 2nd Offense: 2 years (Disqualification), 3rd Offense: Permanent

VIII. CONCLUSIONS OF LAW:

- 1) The evidence reveals that a witness saw the Defendant use his EBT SNAP benefits to purchase food for another individual in order to repay a financial debt. The information reported to the Department was confirmed by the State Repayment Investigator who conducted the investigation - An EBT transaction occurred on the date, time and location as reported. The Department noted that while the Defendant reported his card stolen the following day (1/9/09), only the Defendant would have known the pin number needed to access the EBT account. Moreover, the Defendant failed to appear and refute the claims of the Department or how his EBT card, reported to be stolen on 1/9/09, was used in an attempt to access his EBT SNAP benefits on 1/30/09. This clearly establishes intent.
- 2) The policy and regulations that govern the SNAP / Food Stamp Program state that a program violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.
- 3) There is clear and convincing evidence that the Defendant committed an Intentional Program Violation as defined in the SNAP / Food Stamp policy and regulations.
- 4) In accordance with Food Stamp policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first offense is one (1) year.
- 5) Only the Defendant is subject to this disqualification. The one (1) year disqualification will begin effective October 1, 2009.

IX. DECISION:

I find the Defendant committed an act that constitutes a violation of the Food Stamp Program Regulations 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. Based on evidence presented, I find the violation intentional.

The Department's proposal to apply a Food Stamp disqualification is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of August, 2009.

**Thomas E. Arnett
State Hearing Officer**