



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General**

**Joe Manchin III
Governor**

**Board of Review
P.O. Box 1736
Romney, WV 26757**

**Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary**

July 23, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification hearing held July 16, 2010. The purpose of this hearing was to determine whether or not you intentionally committed an Intentional Program Violation.

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 Supplemental Nutrition Assistance Program is based on current policy and regulations. These regulations provide 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 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 SNAP regulations by using another individual's EBT card without authorization.

It is the decision of the State Hearing Officer to Uphold the proposal of the Department to implement a 12-month Intentional Program Violation against you.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young Chairman, Board of Review
Lori Woodward, RI

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

-----,

Defendant,

v.

Action Number: 10-BOR-1384

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

Movant.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing 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 convened on July 16, 2010.

II. PROGRAM PURPOSE:

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:

Lori Woodward, Repayment Investigator (RI)

Presiding at the Hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation and should be disqualified for one year from participation in the Supplemental Nutrition Assistance Program or SNAP.

V. APPLICABLE POLICY:

Code of Federal Regulations, 7 CFR § 273.16
Common Chapters Manual, Chapter 700
West Virginia Income Maintenance Manual, Chapter 20.2; Chapter 9.1.A.2.h

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Criminal Complaint from [REDACTED] County Magistrate Court dated October 6, 2008
- D-2 [REDACTED] County Magistrate Court Criminal Case History
- D-3 West Virginia Income Maintenance Manual Chapter 20.2
- D-4 Deposit Ticket demonstrating restitution dated March 19, 2010
- D-5 West Virginia Income Maintenance Manual Chapter 9.1; Common Chapters 740
- D-6 Waiver of Administrative Disqualification Hearing for Trafficking Cases
- D-7 Rights and Responsibilities dated October 2009

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on June 3, 2010. The Department contends that the Defendant committed an Intentional Program Violation (IPV) and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twelve (12) month period.
- 2) Notification of the scheduled hearing was sent to the Defendant on June 3, 2010 via certified restricted mail delivery. The Board of Review was notified on June 17, 2010 that the Defendant received such notification letter.
- 3) The hearing convened as scheduled at 1:00 P.M. on the requested date. As of 1:15 P.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 740.20), the hearing was conducted without the Defendant in attendance.
- 4) Lori Woodward, Repayment Investigator, submitted information which indicates that the Defendant used another individual's Electronic Benefits Transfer (EBT) card, without permission, to obtain and use Food Stamp benefits in September 2008. Exhibit D-1, Criminal Complaint with the [REDACTED] County Magistrate Court, documents that the Defendant was positively identified by surveillance footage making unauthorized purchases with another individual's EBT card from September 9, 2008 through September 19, 2008. During that timeframe, the cardholder was incarcerated in the [REDACTED] Regional Jail and unable to make purchases. Exhibit D-1 documents that the Defendant completed three unauthorized purchases with the stolen EBT card totaling \$19.02 during the specified timeframe. Transactions took place at the [REDACTED] on September 9, 2008 (\$15.41), September 11, 2008 (\$1.39), and September 19, 2008 (\$2.22).

5) Ms. Woodward submitted Exhibit D-2, Criminal Case History, which identified that the Defendant was arrested on October 11, 2008 for “unlawfully but not feloniously purchase or attempt to purchase goods”. On March 31, 2010, the Defendant agreed to restitution and the case was dismissed. On March 19, 2010 the Defendant paid all restitution and court cost to the State of West Virginia (Exhibit D-4).

6) Ms. Woodward testified that the Defendant completed her own SNAP application on October 15, 2009. As part of her application for benefits, the Defendant completed Exhibit D-7 and checked “yes” to the following pertinent information:

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.

48) I understand, that any person who obtains or attempts to obtain 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.

7) 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, Chapter 9.1 indicates:

Persons who have been found guilty of an IPV are disqualified as Follows:

- 1st Offense: 1 Year
- 2nd Offense: 2 Years
- 3rd Offense: Permanent

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern SNAP benefits dictate 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.
- 2) The Defendant was not authorized to make purchases on the EBT card and misrepresented herself, on three separate occasions in September 2008, to acquire food stamp benefits for which she was legally not entitled.
- 3) Based on information provided during the hearing, there is clear and convincing evidence to ascertain that the Claimant committed an Intentional Program Violation as defined by SNAP 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 (1st) offense is one (1) year.
- 5) The Defendant is the only assistance group member subject to said disqualification penalty. The one year disqualification penalty will begin September 1, 2010 and will run concurrently for the next 12 months.

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 ____ day of July 2010.

Eric L. Phillips
State Hearing Officer