



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 E. Third Avenue
Williamson, WV 25661**

**Earl Ray Tomblin
Governor**

**Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary**

December 7, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing held September 8, 2010, for the purpose of determining whether 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 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.

An Intentional Program Violation consists of having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of the Food Stamp Act, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. [WV Income Maintenance Manual Section 20.2,C,2 and 7 CFR Section 273.16 (c)]

Information submitted at the hearing reveals that you intentionally obtained and used other SNAP recipients' EBT account information in order to receive SNAP benefits for which you were not entitled..

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. Your disqualification from SNAP will begin effective January 1, 2011.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Brian Shreve, Repayment Investigator

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

-----,

Defendant,

v.

Action Number: 10-BOR-1419

**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 an Administrative Disqualification Hearing concluded on December 7, 2010 for ----- . This hearing was held at the Logan County office of the WV Department of Health and Human Resources (DHHR), in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. The hearing was convened on September 8, 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:

Brian Shreve, Repayment Investigator

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

The Hearing Examiner placed participant under oath at the beginning of the hearing.

IV. QUESTION 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 SNAP.

V. APPLICABLE POLICY:

7 CFR §273.16 Code of Federal Regulations

Common Chapters Manual, Chapter 700

West Virginia Income Maintenance Manual: Chapter 1.2, Chapter 20.2; Chapter 20.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of the Code of Federal Regulations (CFR) §273.16 showing disqualifications for Intentional Program Violations.
- D-2 BVRF Screen print from RAPIDS System showing referral for recoupment.
- D-3 Logan, WV Police Department Complaint Report, dated April 8, 2010.
- D-4 EBT Administration System transaction history for -----of [REDACTED] WV.
- D-5 Work schedule from [REDACTED] convenience store, [REDACTED] WV, for March 27 through April 9, 2010.
- D-6 Written Statement from an EBT card-holder, dated April 16, 2010.
- D-7 EBT Administration System transaction history for [REDACTED] of [REDACTED] WV.
- D-8 Copy of Rights and Responsibilities forms dated and signed by Defendant on February 2, 2010.
- D-9 Copy of IFM-BR-44 Waiver of Administrative Disqualification Hearing form and IFM-BR-44a Notice of Intent to Disqualify form, and appointment letter for pre-hearing conference on May 21, 2010, sent to Defendant on May 5, 2010.
- D-10 Paycheck stubs from [REDACTED] Inc., to Defendant, dated January 6, January 13, January 20, January 27 and February 3, 2010.

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of Intentional Program Violation, or IPV, in the Defendant's SNAP case because she allegedly obtained and used EBT account information to gain access to SNAP benefits belonging to other recipients.
- 2) Defendant was mailed notice of the Administrative Disqualification Hearing on August 26, 2010, by first class mail. The notice was sent to ----, ----. This is the address at which Defendant receives her public assistance benefits.
- 3) The hearing was scheduled for 2:30 p.m. on September 8, 2010, and as of 2:45 p.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 convened at 2:45 p.m., and was conducted without the Defendant in attendance.

- 4) On April 6, 2010, Department's representative, a Repayment Investigator, received a telephone call from a SNAP benefits recipient from [REDACTED] WV, herein referred to as Complainant-1. Department's representative testified that Complainant-1 told him her SNAP benefits on her Electronic Benefits Transfer (EBT) account had unauthorized transactions taken from it. She told Department's representative that she went to the [REDACTED] County office of the WV DHHR and spoke to a worker about these transactions. The worker gave her a print-out of her EBT account transaction history (Exhibit D-4), which revealed that the unauthorized purchases came from the [REDACTED] a convenience store in [REDACTED] WV. The unauthorized purchases were made at 9:40 a.m., 12:25 p.m. and 1:46 p.m. on April 2, 2010. She told Department's representative that her husband had gone into the store for a job interview that day, and used the card for a purchase while there.
- 5) Department's representative testified that Complainant-1 filed a criminal complaint with the [REDACTED] City Police. He stated that on April 8, 2010, he went to the [REDACTED] City Police station and obtained a copy of the complaint she filed. (Exhibit D-3.) According to the complaint, Defendant was identified by [REDACTED] City Police as being on duty at the convenience store when the unauthorized purchases were made.
- 6) Department's representative testified that he went to the [REDACTED] convenience store and spoke to the shift manager about this situation. He stated the manager was familiar with the situation because Complainant-1 had also called her about the unauthorized transactions. The manager told him that many EBT card holders make purchases then do not take their receipts, which have the EBT account numbers on them. She told him that they discard the receipts in a garbage can near the door, or often simply leave them on the store counter. Department's representative stated the manager told him the keypad used to enter PIN numbers is situated so that it would not be difficult for the clerk to see the numbers as they are entered. Then, with the EBT account number on the receipt and the PIN number memorized and written on the back of the receipt, a recipient's EBT account could be accessed by keying in the card number and entering the PIN. The manager submitted to Department's representative a work schedule from the convenience store for a period of time from March 27, 2010 to April 9, 2010 (Exhibit D-5), indicating that Defendant was the only clerk working from 9:00 a.m. to 5:00 p.m. on April 2, 2010.
- 7) Department's representative testified that a worker at the [REDACTED] County DHHR office told him another customer had come to her with complaints about unauthorized EBT transactions, and had determined the transactions had occurred at the [REDACTED] convenience store in [REDACTED] WV. He testified that on April 16, 2010, he contacted and interviewed this individual, herein referred to as Complainant-2, who was an authorized card-holder for his mother's SNAP benefits because his mother was disabled. Department's representative presented a written statement from Complainant-2 indicating he had not been in the [REDACTED] convenience store in more than a year, and on April 4 or April 5, 2010, he had the EBT card in his possession. (Exhibit D-6.) Department's representative presented a print-out from Complainant-2's EBT account (Exhibit D-7) indicating that on April 4 and April 5, 2010, certain purchases from the [REDACTED] convenience store had been debited in his EBT account, and he had not made the purchases. The print-out indicates that other purchases had been made at the store, but Complainant-2 told Department's representative that his mother could have made them. Complainant-2 told Department's representative that he was certain purchases made on April 4 at 5:19 p.m., 5:57 p.m. and 7:33 p.m., and on April 5 at 11:00

a.m., 1:24 p.m. and 1:30 p.m. were unauthorized because he had the EBT card in his possession and did not go into the convenience store at those times.

- 8) The convenience store work schedule (Exhibit D-5) indicates that Defendant was the only clerk working there from 3:30 to 11:30 p.m. on April 4, 2010 and from 9:00 a.m. to 5:00 p.m. on April 5, 2010.
- 9) Department's representative testified that the total amount of the unauthorized EBT purchases made at the [REDACTED] convenience store on April 2, April 4 and April 5, 2010, was \$196.47.
- 10) The Code of Federal Regulations, 7 CFR §273.16(c) (Exhibit D-1), defines an Intentional Program Violation (IPV) as:

(c) Definition of intentional Program violation. 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).

- 11) The West Virginia Income Maintenance Manual, Chapter 1.2.E (Exhibit D-8), states:

The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility . . . The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions: denial of the application; closure of the active AG [assistance group]; removal of the individual from the AG; repayment of benefits; reduction in benefits.

- 12) The West Virginia Income Maintenance Manual, Chapter 9.1.A.2.h, states:

h. Intentional Program Violation (IPV)

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

- 1st offense: 1 year
- 2nd offense: 2 years
- 3rd offense: Permanent

- 13) The West Virginia Income Maintenance Manual, Chapter 20.2 (Exhibit D-9), 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.

14) The West Virginia Income Maintenance Manual, Chapter 20.6.A (Exhibit D-10), states:

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false . . . [I]t is not essential that an affirmative representation be made. Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false.

VIII. CONCLUSION OF LAW:

The Department has provided clear and convincing evidence that the Defendant intentionally obtained EBT card numbers in her capacity as an employee at a convenience store and used these numbers to access and spend the SNAP benefits of EBT cardholders in April, 2010.

IX. DECISION:

Fraudulently obtaining and using EBT account information without the permission of the card owner is a clear violation of the regulations. Based on the evidence presented, I find the violations intentional.

The Agency's proposal to apply a SNAP disqualification is **upheld**. The Defendant will be disqualified from participation in SNAP, or the Food Stamp program, for a period of twelve (12) months to begin effective January 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of December, 2010.

Stephen M. Baisden
State Hearing Officer