



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

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

October 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 October 5, 2010 for the purpose of determining whether or not you committed an 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 SNAP 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 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). Trafficking means the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food. 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 § 271.2 and 273.16).

The information submitted at the hearing showed that you intentionally sold your electronic benefit transfer (EBT) card in exchange for the sum of fifty dollars (\$50.00).

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against you based on the finding that you committed an Intentional Program Violation. Your penalty begins December 1, 2010.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/Natasha Jemerison, Kanawha DHHR

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

-----,

Defendant

v.

Action Number: 10-BOR-1758

**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 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 October 5, 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:

Natasha Jemerison, State Repayment Investigator, Department Representative

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

IV. QUESTION 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 SNAP.

V. APPLICABLE POLICY:

7 CFR § 271.2 and 273.16 USDA Code of Federal Regulations
Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual §1.2, 9.1.A.2.h and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Benefit Recovery Referral Screen from RAPIDS dated April 29, 2010 and submission details
- D-2 Code of Federal Regulations 7 CFR 271.2
- D-3 Code of Federal Regulations 7 CFR 273.16
- D-4 Police Report dated January 10, 2010
- D-5 [REDACTED] Police Department Investigative Statement Form dated January 10, 2010
- D-6 Rights and Responsibilities form dated March 31, 2008
- D-7 WV Income Maintenance Manual Section 20.6
- D-8 Notification letters sent to Defendant and WV Income Maintenance Manual Section 20.2

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing (ADH) was received by the Board of Review from the Department of Health and Human Resources (Department) on August 17, 2010. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) in the form of trafficking by selling her electronic benefit transfer (EBT) card to another individual in exchange for the sum of fifty dollars (\$50.00), and is recommending that she be disqualified from participation in SNAP for a period of one (1) year.
- 2) Notification of the October 5, 2010 hearing was mailed to the Defendant on or about August 17, 2010 via first class mail delivery, as the Defendant is a current recipient of benefits through the Department and resides at an address known to be good by the Department.

- 3) The hearing was convened as scheduled at 1:00 p.m., and as of 1:16 p.m. the Defendant failed to appear or notify the Board of Review of any conflict preventing her from appearing. 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) On or about April 29, 2010 the Department sent the Defendant a Notification of Intent to Disqualify (D-8) form, indicating that the Department had reason to believe she intentionally violated a food stamp rule. The form also included the following:

Based on the evidence developed through our investigation, the agency believes that -----intentionally violated the food stamp program by: selling her EBT card. The evidence to prove this allegation consists of Police Report, Written Statement by -----.

- 5) The Department representative, Natasha Jemerison, testified that the Defendant has received benefits off and on from the Department since September 2006, and during this timeframe has signed numerous applications and rights and responsibilities forms thereby acknowledging that she understood that she cannot sell her SNAP benefits and they are to be utilized to purchase only food or seeds; additionally, 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.
- 6) The Department also provided evidence (D-4) in the form of a police report completed by the [REDACTED] West Virginia Police Department on January 10, 2010. This report was completed by Corporal [REDACTED] of the Charleston West Virginia Police Department and contains the following pertinent information:

On Jan. 10th 2010 at approx. 1600 hrs. I responded to [REDACTED] to a report of an argument with shots fired. Upon my arrival I spoke with the victims, ----- and -----.

According to both written and verbal statements provided by the victims, they were confronted by [REDACTED] and her son. The argument was over the fact that [REDACTED] sold her food stamp card to [REDACTED] for fifty dollars and it was supposed to have over one hundred dollars credit on it.

When [REDACTED] went to a nearby store, she discovered the card had no value. This enraged her causing a confrontation to ensue.

- 7) The evidence shows the Defendant completed a hand-written statement (D-5) on January 10, 2010 in which she stated she gave her "food stamps card" to another individual in exchange for the sum of fifty dollars (\$50.00). She witnessed the statement and certified it to be true and correct to the best of her knowledge.
- 8) West Virginia Income Maintenance Manual § 20.2 (C) (2) states in pertinent part:

IPV's include making false or misleading statement, 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.

The individual(s) who is found to have committed an IPV is ineligible to participate in the program for a specified time, depending on the number of offenses committed.

Once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV.

- 9) 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.
- 10) The Code of Federal Regulations §7 CFR 271.2, Definitions, states in pertinent part:

Trafficking means the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food;
- 11) The Code of Federal Regulations §7 CFR 273.16 states in pertinent part:

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).
- 12) 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.
- 13) The Defendant signed numerous applications and rights and responsibilities forms (D-6) thereby acknowledging the following pertinent responsibilities:
 - 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 receive SNAP benefits as follows: First Offense – one year; Second Offense – two years; Third Offense – permanently.

48) I also understand that if I give incorrect or false information or if I fail to report changes that I am required to report, I may be required to repay any benefits I receive and I may also be prosecuted for fraud. I also 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.

49) I certify that all statements on this form have been read by me or read to me and that I understand them. I certify that all the information I have given is true and correct and I accept these responsibilities.

14) West Virginia Income Maintenance Manual §9.1.A.2.h states:

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

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern the Food Stamp program state that trafficking means the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food; and that an Intentional Program Violation shall consist of having intentionally 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).
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) The Defendant clearly was aware of her responsibility to use her SNAP only for food and seeds, and the penalties involved for failing to do so. She read and signed numerous Rights and Responsibilities forms during the period in question.
- 4) The evidence is also clear in that the Defendant intentionally sold her EBT card to another individual for profit. She reported to the [REDACTED] West Virginia Police Department that she sold her card in exchange for the sum of fifty dollars (\$50.00). She also signed a hand written statement attesting to the same acts. Policy is clear in that the selling of an EBT card for cash or other consideration other than food is trafficking, which is considered an intentional program violation.

- 5) The Department was correct in its determination that the Defendant has committed an Intentional Program Violation by intentionally reporting false information about her household composition.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The penalty will begin December 1, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of October, 2010.

**Cheryl Henson
State Hearing Officer**