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In the Matter of the Appeal of	:	
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Cayuga County	:	<b>DECISION</b>
Department of Social Services (Agency)	:	<b>AFTER</b>
	:	<b>ADMINISTRATIVE</b>
vs.	:	<b>DISQUALIFICATION</b>
	:	<b>HEARING</b>
██████████, Recipient	:	

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**JURISDICTION**

Pursuant to 18 NYCRR 359.7, an administrative disqualification hearing was held on June 14, 2011, in Cayuga County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Recipient

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For the Social Services Agency

Lisa Smith, Fair Hearing Representative

**ISSUE**

Was the Agency's determination that the recipient committed an intentional program violation of the Food Stamp program correct?

**FINDINGS OF FACT**

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The recipient, age 34, has been in receipt of Food Stamps for a one person household.

FH# 5704070Q

2. The Agency determined that the recipient had committed an intentional program violation of the Food Stamp Program by intentionally misusing her EBT card and PIN while she was in receipt of such benefits.

3. The Agency requested the Office of Administrative Hearings of the New York State Office of Temporary and Disability Assistance (Office) to schedule this administrative disqualification hearing based upon its determination.

4. Pursuant to such request and based upon the documentation submitted to the Office in support of the Agency's allegation, this hearing was scheduled by notice dated May 9, 2011. The notice indicated that the recipient would be disqualified from receiving Food Stamps for a period of one year.

5. The recipient was in receipt of Food Stamp benefits of \$200.00 in October 2010. The recipient did not authorize anyone else to use her EBT card and PIN to access her Food Stamp benefits.

6. The recipient was advised not to let anyone else use her benefit card or to tell anyone her PIN.

7. The recipient gave her EBT benefit card and PIN to another person and allowed this person to access her Food Stamps on October 13, 2010.

8. Although duly notified of the date, time and place of this hearing by first class mail, the recipient has not appeared to contest the Agency's allegations.

### **APPLICABLE LAW**

The New York State Office of Temporary and Disability Assistance and local agencies are required to investigate cases of alleged intentional program violations (IPVs) in Public Assistance and Food Stamp Programs. 18 NYCRR 359.2; 7 CFR 273.16.

For purposes of an administrative disqualification hearing relating to Food Stamp benefits, a person has committed an intentional program violation if the individual has intentionally:

(1) made a false or misleading statement, or misrepresented, concealed or withheld facts concerning the individual's eligibility for Food Stamps; or

(2) committed any act that constitutes a violation of the Food Stamp Program, including, but not limited to, acts constituting a fraudulent use, presentation, transfer, acquisition, receipt, possession or alteration of Food Stamp coupons or Authorizations to Participate or any other evidence of the individual's eligibility for Food Stamps.

18 NYCRR 359.3(b); 7 CFR 273.16(c).

FH# 5704070Q

Individuals found to have committed an FS-IPV, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement, are ineligible to participate in the Food Stamp Program for a period of time specified by law. As of September 21, 1996, the disqualification period is one year for the first violation, two years for the second violation, and permanently for the third violation. 7 CFR 273.16; 18 NYCRR 359.9(c).

However, if a court of appropriate jurisdiction determines that an individual has engaged in conduct that constitutes an intentional program violation, the individual must be disqualified for the length of time specified by the court, if the court has imposed a disqualification period for such a violation. If a court fails to impose a disqualification period for an intentional program violation, the local Social Services district must impose the disqualification penalties specified in 18 NYCRR 359.9 unless such imposition is contrary to court order. 18 NYCRR 359.9(d); 7 CFR 273.16(g)(2).

## **DISCUSSION**

The record establishes that the recipient submitted a Food Stamp recertification in February 2009. Her household consisted of herself only. The application form advised her that she could be found guilty of an intentional program violation if she made a false or misleading statement, misrepresented or withheld facts, or committed any act that constitutes a violation of federal or state law for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, or authorization cards used as part of the electronic benefit transfer (EBT) system. The recipient signed the application form on February 12, 2009. She was certified to receive Food Stamps through February 2011 due to her receipt of SSI and Social Security Disability.

The Agency submitted a copy of the recertification. The recipient did not designate anyone else as an authorized representative to use her EBT card and PIN.

The Agency submitted documentation establishing that on October 13, 2010 a person other than the recipient used the recipient's EBT card and PIN at a supermarket. The documentation included the recipient's photo identification, and an SFARS report, which is a computer record of the date, time, and location that an EBT card is used, along with the amounts redeemed. This record showed that on October 13, 2010 at 8:10 PM at a local supermarket, \$106.63 was used. The Agency contacted the supermarket and obtained the surveillance video of the transactions. At the hearing the Agency's investigator testified that when given the date, time, and amount of the transaction, the supermarket can identify the surveillance video of that transaction at the checkout counter. The Agency submitted pictures from the video. The pictures clearly show a young woman who is not the recipient using the EBT card. None of the pictures showed that the recipient was present with the young woman. At the hearing, the investigator stated that an EBT card could not be used without the PIN. The Agency also submitted pictures from a surveillance video taken on October 15, 2010. On that date, a different

FH# 5704070Q

person used the EBT card and PIN. However, the pictures were not clear enough to verify who used the card and PIN.

The record therefore establishes through clear and convincing evidence that the recipient committed an intentional violation of the Food Stamp program on October 13, 2010 because she willfully and intentionally misused her EBT card and PIN.

**DECISION AND ORDER**

The Agency's determination that as a result of misusing her EBT card and PIN, the recipient committed an intentional program violation of the Food Stamp Program, is correct.

The Agency is directed to disqualify the recipient.

DATED: Albany, New York  
07/14/2011

NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, consisting of stylized, cursive letters, likely representing the name of the Commissioner's Designee.

Commissioner's Designee