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In the Matter of the Appeal of	:	
	:	
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, Welfare Fraud Investigator

**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 has been in receipt of Food Stamps for a household of two.
2. The Agency determined that the recipient had committed an intentional program violation of the Food Stamp Program by misusing her EBT card, PIN, and benefits, while the recipient and her household were in receipt of such benefits.

FH# 5756879Y

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 one year.

5. The recipient was in receipt of Food Stamp benefits in February 2011. She had not authorized anyone else to use her EBT card and PIN to access her Food Stamps.

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 February 3, 2011.

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).

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

FH# 5756879Y

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).

## **DISCUSSION**

The record establishes that the recipient applied for Food Stamps in October 2010. Her household consisted of herself and one child, age 12 at the time. 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 October 15, 2010. In addition, she signed a "Client Reminders" statement from the Agency, that advised her not to let anyone else use her benefit card and not to tell anyone her PIN (personal identification number). The recipient signed this statement on October 15, 2010.

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

The Agency submitted documentation establishing that on February 3, 2011 at about 3 AM, an adult male used the recipient's EBT card and PIN at a supermarket. The documentation consisted of 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 February 3, 2011 at 3:00 AM and 3:02 AM, at a local supermarket, the card and PIN were used for two purchases totaling \$99.98. The Agency contacted the supermarket and obtained the surveillance video of the transactions. At the hearing the Agency's investigator testified that the 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 an adult male using the EBT card. None of the pictures showed that the recipient was present with the male. At the hearing, the investigator stated that an EBT card could not be used without the PIN. The Agency also submitted a written report of the investigation. This report showed that the investigator scheduled interviews with the recipient but she did not keep the appointments.

The record therefore establishes through clear and convincing evidence that the recipient committed an intentional violation of the Food Stamp program by willfully and intentionally misusing 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.

FH# 5756879Y

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 that appear to be 'M' and 'C'.

Commissioner's Designee