

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>LORAIN</b>	District Hearings Section <b>TOLEDO</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>LORAIN CDJFS</b>	Initial Hearing Date <b>01/18/2005</b>	Rescheduled Postponed to <b>03/11/2005</b>	Rescheduled Postponed to <b>02/09/2005</b>	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Julia Williams - Income Maintenance Case Worker Joseph Drew - Income Maintenance Aide</b>

Date Notice Mailed <b>11/18/2004</b>	Date Received by Local Agency	Date Received by ODHS <b>12/26/2004</b>	Date Appeal Summary Received	Date Scheduling Notice Mailed <b>02/22/2005</b>
Appeal Number(s)/Program(s) <b>1208438/FS</b>				

### Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

**If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to:** Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 or FAX (614) 728-9574. Your request should state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form must be received by the Bureau of State Hearings within 15 calendar days from the date this decision is issued. (If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.) During the 15-day administrative appeal period, you or your representative may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

### ISSUE SECTION

The Appellant was approved to receive food stamp benefits through the Lorain County Department of Job and Family Services (Agency) on 11-17-04. Her food stamp benefits of \$22 for November 2004 were authorized by the Agency on 11-17-04. Neither the Appellant nor her authorized representative obtained the November 2004 food stamp benefits by 11-30-04. The Appellant's authorized representative requested the Agency to reissue the November 2004 food stamp benefits, however, that request was denied. The issue on appeal is whether the Agency's denial of the Appellant's request for the reissuance of the \$22 food stamp benefits for November 2004 is correct. The Agency's denial of the Appellant's request for reissuance of the November 2004 food stamp benefits is found to be incorrect because the Agency did not allow the Appellant the appropriate opportunity to participate. The EBT card issued on 11-18-04 was not a valid card, and the Appellant could not load her benefits from that card. The replacement EBT card was not issued until 11-29-04. This was the first date after discovering the error with the EBT card that the Appellant could inform the

MEM

Appeal(s) <b>SUSTAINED 1208438</b>	Date Issued <b>03/14/2005</b>	Compliance <b>1208438</b>
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**Distribution:** Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. (Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)

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Agency of the problems with EBT card. The appeal of this issue is sustained.

### **PROCEDURAL MATTERS**

The Appellant's hearing request was received on 12-26-04. The hearing was initially scheduled for 01-18-05, and then rescheduled for 02-09-05. The hearing was again rescheduled for 03-11-05 per scheduling notice sent to the Appellant on 02-22-05. There was no appeal summary received for this issue.

### **FINDINGS OF FACT**

1. The Appellant was in the Agency for a face-to-face interview on 11-17-04.
2. The Agency approved the Appellant's food stamp application on 11-17-04 and authorized benefits. The Agency informed the Appellant that the benefits would be available only until the end of the month.
3. The Appellant was given an Electronic Benefit Card. The card did not function, and the Appellant was given a replacement Electronic Benefit Card on 11-18-04. The Appellant had the Electronic Benefit card activated at the agency on 11-18-04.
4. The food stamp benefits are not available for use at the grocery until 48 hours after the Electronic Benefit Card is activated.
5. The Appellant attempted to load her food stamp benefits on 11-26-04. They were not available due to the Agency listing an incorrect number on the Appellant's Electronic Benefit Card.
6. The Appellant and her Representative were in the Agency on 11-29-04 to obtain another Electronic Benefit Card. This card was activated at the Agency on 11-29-04. This was the first work day subsequent to 11-26-04 when the Appellant attempted to obtain her food stamp benefits.
7. The Appellant's November 2004 food stamp benefits did not become available at the grocery as of 11-30-04.
8. The Appellant's Representative requested the food stamp benefits to be reissued since the Electronic Benefit Card was not initially activated correctly on 11-18-04. The Agency denied the request due to a determination that the Appellant and Representative did not timely attempt to obtain the food stamp benefits after 11-18-04 and did not report the problem to the Agency prior to 11-29-04.

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## **CONCLUSIONS OF POLICY**

### **Policy**

An eligible food stamp household must have an opportunity to participate in the program by being provided with an EBT card and having an available loading facility per Ohio Administrative Code § 5101:4-2-11(D) and 7C.F.R. § 273.2. "An opportunity to participate consists of providing AGs with an EBT card or other authorization and having a loading facility as defined in Chapter (1) of the "User's Guide to Food Stamp Delivery" open and available for the AG to obtain its allotment.'

Benefits authorized before the 20<sup>th</sup> of the month expire as of the last day of that month per Ohio Administrative Code § 5101:4-2-11(E) and 7C.F.R. § 273.2. "Benefits that are authorized before the twentieth of the month shall expire the last day of the month in which the benefits were authorized. In a direct access system as defined in Chapter (1) of the "User's Guide to Food Stamp Delivery," the AG has until the end of the calendar month to obtain its allotment when the benefit is authorized before the twentieth day of the month.

Food stamp benefits that are authorized on the twentieth of the month or later must be made available until the end of the following month per Ohio Administrative Code § 5101:4-2-11(F) and 7C.F.R. § 273.2. "For benefits authorized on or after the twentieth of the month, the period of intended use is through the end of the following calendar month. In a direct access system as defined in Chapter (1) of the "User's Guide to Food Stamp Delivery," the AG has until the end of the following calendar month to obtain its allotment when the benefit is authorized on or after the twentieth of the month.'

The Agency must restore food stamp benefits which were lost due to an Agency error per Ohio Administrative Code 5101:4-8-03(B) and 7C.F.R. § 273.17. "The county agency shall restore to AGs benefits which were lost whenever the loss was caused by an error by the county agency or by an administrative disqualification for intentional program violation which was subsequently reversed, or as otherwise specifically provided for in Chapter 5101:6 of the Administrative Code and paragraphs (G) to (J) of this rule entitling AGs to restoration of lost benefits.'

### **Analysis**

In the Appellant's case, the evidence and testimony provided at the state hearing support a finding that the Appellant applied for food stamp benefits on 11-17-04 and she was approved at that time. Her food stamp benefit amount for November 2004 was \$22. She was issued an EBT card on 11-18-04. It was assumed to have been activated at the Agency on 11-18-04, so that the Appellant could load her food stamp benefits at the grocery by 11-20-04. She attempted to obtain the food stamp benefits on 11-26-04, which was the

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day after Thanksgiving, and it was discovered that there was a problem with the EBT card. The Appellant's representative was in the Agency on 11-29-04, which was the first day the Agency was open since Thanksgiving Day. The Agency discovered that an incorrect number was put in the system on 11-18-04 when the EBT card was activated. This was corrected and the EBT card was again activated on 11-29-04. The food stamp benefits were not available for loading on 11-30-04 due to insufficient time since the activation of the EBT card 11-29-04. The Appellant's Representative requested the Agency to reissue the November 2004 food stamp benefits, and the Agency denied the request. The Agency testimony indicated that the denial was mainly due to the Appellant not contacting the Agency between 11-18-04 and 11-29-04 to report the problem with the EBT card.

The Appellant's Representative is appealing this denial because she stated the Appellant, who is her adult daughter, depends on her for transportation and to help out with the Agency's procedures. The Representative works, and is only available at certain times. The Agency made an error when activating the EBT card on 11-18-04. She and the Appellant did not rush out right away to load the card since it was only \$22 worth of benefits, and they did contact the Agency on the first work day after the Thanksgiving holiday weekend to report the problem. She also asserted that she had been told that she had until 11-30-04 to obtain the food stamp benefits, and did not understand that the food stamp benefits would not be available until 48 hours after the card was activated.

Food stamp benefits that are authorized by the 20<sup>th</sup> of the month must be picked up by the end of that month. There is no dispute that the Appellant was in the Agency on 11-18-04 to activate her EBT card. Due to some type of error in the account number of EBT card, the Appellant's EBT card was actually not activated. The Appellant did not make this error. I do not find that the food stamp benefit was authorized prior to the 20<sup>th</sup> of the month since EBT card was not activated on 11-18-04 as initially believed. Therefore, I find that the Appellant was not allowed the opportunity to participate as required. I find the Agency's argument that the Appellant failed to contact the Agency between 11-18-04 and 11-29-04 to have no merit. She attempted to obtain the food stamp benefits within the allowed time, it was not her fault that the card did not work, and she did contact the Agency on the first available work day after discovering the problem with the EBT card. The Agency is required to restore benefits that are lost due to agency error. Therefore, I find the Agency's denial of the Appellant's request to reissue the \$22 food stamp benefits for November 2004 to be incorrect.

### **HEARING OFFICER'S RECOMMENDATIONS**

Because the Appellant was not allowed the appropriate opportunity to participate in the food stamp program in November 2004 due to an error in her EBT benefit card, and the Appellant did not cause the error, I recommend the appeal of this issue be found in favor of the Appellant and sustained with compliance.

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The Agency is directed to restore as lost benefits, the amount of food stamp benefits that were approved for the Appellant for November 2004, and not picked up by the Appellant as of 11-30-04. The Agency shall notify the Appellant of when these benefits will be available for to obtain via the appropriate notice. A copy of this notice is to be attached to the ODJFS 4068 - State Hearing Compliance Form.

Compliance required.

### **FINAL ADMINISTRATIVE DECISION AND ORDER**

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted. The appeal of this issue is sustained with compliance.

Agency is required to comply with the Hearing Officer's recommendations. Ohio Admin. Code ' 5101:6-7-03(B)(1)(b) requires compliance with this decision within 10 calendar days of receipt, even if Agency must provide a supplement outside the normal issuance cycle. Compliance shall be promptly reported to ODJFS, Bureau of State Hearings, via JFS 04068, compliance form, with supporting documentation. (2003)

### **LIST OF EXHIBITS**

#### **AGENCY**

- A. Food Stamp EBT Procedures and Ohio Direction Card explanation form

#### **APPELLANT**

1. State Hearing Request, received on 12-26-04 (2 pages)

Date Issued: 03/14/2005