

NO. 50001-9-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MELWYN VAN FIELDS,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR MASON COUNTY

The Honorable Daniel L. Goodell, Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

1. There was insufficient evidence that appellant Melwyn Fields committed theft in the second degree.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

1. Melwyn Fields was convicted of theft in the second degree of an electronic benefits transfer (“EBT”) card pursuant to RCW 9A.56.040(1)(d). To be an “access device,” the instrument must be capable of being used to access an account that is not inactivated or unusable to obtain something of value. Where there was no showing the EBT card was associated with an existing, activated Quest EBT account where such accounts are subject to eligibility review by the Department of Social and Health Services to determine if the recipient remains eligible for cash benefits, was there sufficient evidence that Mr. Fields committed theft in the second degree by use of an “access device”?

C. STATEMENT OF THE CASE

1. Procedural history:

Melwyn Fields was charged in the Mason County Superior Court on November 8, 2016, by amended information with second degree theft of an access device. RCW 9A.56.040(1)(d), and RCW 9A.56.020(1)(a). Clerk’s

Papers (CP) 67-68. The State alleged that on January 31, 2014, Mr. Fields wrongfully obtained an access device, specifically an EBT¹ card belonging to Heather Freeman, formerly known as Heather Kempton. CP 67.

The case came on for jury trial on November 8 and 9, 2016, the Honorable Daniel L. Goodell presiding. Report of Proceedings (RP)² at 9-154.

2. Trial Testimony:

Heather Freeman and her then-boyfriend Scott Brill were riding on a transit bus in Shelton, Washington on January 31, 2014. RP at 80. They reached their stop near the Shelton Civic Center and both got off the bus. RP at 81. While on the bus, Ms. Freeman and Mr. Brill both noticed a man who was sitting behind them, which was otherwise sparsely occupied by riders. RP at 81, 99.

Shortly after getting off the bus, Ms. Freeman realized that she left her black purse behind. RP at 82. Mr. Brill called the transit authority who communicated with the bus driver, but was unable to determine if the purse was on the bus. RP at 100. Ms. Freeman and Mr. Brill decided to check the

¹Electronic benefits transfer.

²The verbatim report of proceedings consists of the following sequentially paginated hearings: 06/20/16; 08/22/16; 11/08/16; 11/08/16, (jury trial, day 1); 11/09/16, (jury trial, day 2); 11/28/16, (sentencing); and 11/29/16 (reading of appellate and collateral attack rights).

bus themselves, and walked to the bus station, which is located near the Civic Center. RP at 83, 100. At the bus station, Mr. Brill inspected the bus interior but did not find the purse. RP at 83, 100. They then went to a police station located inside the Civic Center to report the missing purse. RP at 100.

Shelton police officer Justin Doherty helped Ms. Freeman file the report at the police station. RP at 84. After completing the report, Ms. Freeman and Mr. Brill left the Civic Center. RP at 84. As they left the Center they saw the man who had been sitting behind them on bus, who was also leaving the building. RP at 85, 100. Mr. Brill asked the man, who was subsequently identified as Melwyn Fields,³ if he had seen the purse. RP at 85, 100. Mr. Fields denied that he had seen her purse and then left the Civic Center. RP at 85. Mr. Brill and Ms. Freeman returned to the police station and told Officer Doherty that they had seen the man who was sitting on the bus behind them. RP at 108. Ms. Freeman then left and followed Mr. Fields, who was rapidly walking away. RP at 86. Officer Doherty got in his patrol vehicle and intercepted Mr. Fields as he was walking. RP at 86, 108. Officer Doherty contacted Mr. Fields and asked if he could look inside a backpack that he was carrying. RP at 87, 108. Mr. Fields agreed to let the officer search the backpack. RP at 109. Inside the backpack the officer

³The appellant's last name is Fields, rather than "Van Fields." RP at 9.

found a wallet with butterflies printed on it. RP at 110. Ms. Freeman identified the item as her wallet that was originally kept inside her missing purse. RP at 109-10. The wallet contained Ms. Freeman's social security card. RP at 110. The officer then placed Mr. Fields under arrest and during a search, located a purple Bic lighter in Mr. Fields' jeans pocket. RP at 111 Ms. Freeman identified the lighter and stated that it was originally located in her missing purse. RP at 111.

Mr. Brill, who was present when Officer Doherty initially contacted Mr. Fields, went back to the Civic Center, entered the men's bathroom and found Ms. Freeman's purse, a Quest EBT card issued to Heather Kempton,⁴ and other items from the purse scattered on the floor of a bathroom stall. RP at 101. Exhibit 4. He put the EBT card and her personal items in the purse and then went back and gave the items to Officer Doherty, who was still talking with Mr. Fields. RP at 103-04, 111.

Ms. Freeman testified that she was issued an EBT card and that it is accessed by using a code. RP at 89.

Mr. Fields testified that he was on the bus with Ms. Freeman and Mr. Brill, but denied taking the purse and stated that there were other people who were riding the bus at that time. RP at 117. He stated that he had been

⁴Heather Kempton later changed her name to Heather Freeman. RP at 80.

homeless for two years at that time, and he got off the bus at the library to look for cigarette butts. RP at 117. When walking, he saw a lighter, a pack of cigarettes, and a wallet on a bench near the Civic Center and took them. RP at 117, 119. He stated that he “thought somebody got drunk and left it overnight.” RP at 117, 118. After he found the wallet and cigarettes, he was stopped by Officer Doherty as he walked past the Civic Center. RP at 119. He let the officer search his backpack because he did not feel he had done anything wrong by just “grab[ing] something that was on the bench.” RP at 119. He denied telling Officer Doherty that he got the purse from a relative, and said that the officer misunderstood him, and that he told Officer Doherty that he intended to give the wallet, which had butterflies printed on it, to his little cousin. RP at 117-18. On rebuttal testimony, Officer Doherty stated that Mr. Fields said that he had received the wallet from a family member two weeks prior to the incident. RP at 120.

3. Verdict and Sentence:

The jury found Mr. Fields guilty of second degree theft as charged in the amended information. RP at 150-51; CP 30. The court sentenced Mr. Fields to a midrange sentence of four months with credit for time served. RP at 163; CP 15. Mr. Fields, who was homeless at the time of the incident in

2014, had significantly improved his circumstances and had recently obtained work. RP at 162. The defense offered no argument that he did not have the ability to pay legal financial obligations. RP at 162. The court imposed LFOs including a \$500.00 victim assessment, \$658.80 in court costs, court-appointed attorney fees, and \$100.00 felony DNA collection fee. RP at 164; CP 17.

Timely notice of appeal was filed on November 29, 2016. CP 6. This appeal follows.

D. ARGUMENT

1. THE EVIDENCE WAS INSUFFICIENT TO CONVICT MR. FIELDS OF THEFT IN THE SECOND DEGREE

The State charged Mr. Fields with second degree theft pursuant to RCW 9A.56.040(1)(d), which required the State to prove Mr. Fields stole an access device as defined by RCW 9A.56.010(1) CP 67. The State failed to prove the EBT card found with Ms. Freeman's purse in the toilet stall was an "access device" capable of being used to obtain anything of value, as contemplated by the Legislature. Accordingly, the evidence presented is insufficient and the conviction for second degree theft must be reversed.

Due process requires that the State prove, beyond a reasonable doubt, every fact necessary to constitute the charged crime. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Where a defendant challenges the sufficiency of the evidence, the proper inquiry is “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)). Furthermore, “[a] claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980)). “Circumstantial evidence and direct evidence are equally reliable.” *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

Circumstantial evidence “is sufficient if it permits the fact finder to infer the finding beyond a reasonable doubt.” *State v. Askham*, 120 Wn. App. 872, 880, 86 P.3d 1224, 1228 (2004) (citing *State v. King*, 113

Wn.App. 243, 270, 54 P.3d 1218 (2002)). The appellate court “defer[s] to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.” *Thomas*, 150 Wn.2d at 874-875. Sufficient means more than a mere scintilla of evidence; there must be that quantum of evidence necessary to establish circumstances from which the jury could reasonably infer the fact to be proved. *State v. Fateley*, 18 Wn. App. 99, 102, 566 P.2d 959 (1977). The remedy for insufficient evidence to prove a crime is reversal, and retrial is prohibited. *State v. Smith*, 155 Wn.2d 496, 505, 120 P.3d 559 (2005).

A challenge to the sufficiency of the evidence may be raised for the first time on appeal as manifest constitutional error. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983).

a. The State failed to prove the EBT card is an “access device” that can be used to obtain anything of value.

A defendant is guilty of theft in the second degree when he or she wrongfully obtains or exerts unauthorized control over an access device, the property of another, with intent to deprive that person of the access device. RCW 9A.56.040(1)(d); CP 38, 39, 43. (Court’s Instructions to the Jury, 6, 8, and 10).

RCW 9A.56.010(1) defines “access device” as follows:

“Access device” means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument.

RCW 9A.56.010(1); CP 43, Jury Instruction 10.

b. The State failed to prove the EBT card is an access device

In what the appellant believes is a case of first impression in Washington, Mr. Fields argues that the State failed to prove an EBT card, without further evidence of current eligibility to receive Supplemental Nutrition Program cash benefits, constitutes an “access device” that can function as a “means of account access” as required by RCW 9A.56.010(1).

Washington courts have addressed whether cards used to access credit accounts, bank accounts, and even gift card accounts may constitute an access device under RCW 9A.56.010(1). After diligent search, however, undersigned counsel believes that no Washington court has addressed whether a government-issued benefits card with specific requirements for continued eligibility including periodic eligibility reviews, constitutes an access device under the statute.

i. Credit cards

In cases involving theft or misuse of credit cards, a defendant must demonstrate that the card was inactive, unusable, or unlinked to active accounts in order to show that the credit cards is not an access device.

In *State v. Schloredt*, 97 Wn.App. 789, 987 P.2d 647 (1999), the defendant possessed several stolen credit cards and was convicted of second degree possession of stolen property. *Schloredt*, 97 Wn.App. at 791–92. *Schloredt* argued on appeal that the State had failed to prove the cards had not been cancelled after the theft, and therefore could “be used” as required by RCW 9A.56.010(1). *Schloredt*, 97 Wn.App. at 793. Division One found the argument meritless, noting that “can be used” should be interpreted from the rightful owner's point of view, not from the viewpoint of the unlawful possessor. *Schloredt*, 97 Wn.App. at 794. The Court held that the State makes a sufficient showing of an “access device” if a reasonable inference could be made from the witness testimony that the cards were active, absent evidence to the contrary. *Schloredt*, 97 Wn.App. at 794.

In *State v. Clay*, 144 Wn.App. 894, 184 P.3d 674 (2008), review denied, 165 Wn.2d 1014 (2009), Division One held that RCW 9A.56.010(1) does not require the device to be activated, and the statute focuses on the *capacity* of the device to be used. *Clay*, 144 Wn.App. at 898–99. In *Clay*, the

defendant was found with a Mervyn's credit card belonging to Berna Llorico, which was signed with Llorico's name on the back. *Clay*, 144 Wn.App. at 896. At trial, Llorico testified that she had never seen the card, but maintained a single Mervyns account for a number of years, that her account number had changed, and that she had not received her new card. *Id.* Clay argued that the card could not “ ‘be used’ to obtain anything of value because it was never activated.” *Id.* at 897. The Court disagreed, holding that “the statute [RCW 9A.56.010(1)] does not require that the access device be activated.” *Id.* at 898.

ii. Gift cards

In *State v. Nelson*, 195 Wn.App. 261, 271, 381 P.3d 84 (2016), this Court held that “the definition of “access device” can include gift cards so long as they are a means of account access.” Nelson stole “unfunded” gift cards from her employer and activated each card by adding funds to it without adding cash to the cash register. She was charged with second degree theft of an access device and second degree possession of a stolen access device. The trial court granted Nelson's motion to dismiss, ruling that the gift cards she stole did not meet the definition of “access devices.” This Court reversed the order of dismissal and found the gift cards are a “means of account access” as required by RCW 9A.56.010(1). *Nelson*, 195 Wn.App. at 271.

Cases addressing activated credit cards or a “funded” gift card are inapposite to the case at bar. A credit card or funded gift card is unlike an EBT card because a credit card or gift card, once activated, is shockingly easy to use illicitly and remains active until it is cancelled by the issuing company, bank or credit union. Accordingly, *Clay*, *Schloredt*, and *Nelson* are distinguishable because there was no evidence presented at trial showing that (1) the EBT account was active or if it had expired, (2) whether Ms. Freeman remained eligible to receive benefits following periodic DSHS review, or (3) and whether an EBT account card issued in her previous name was inactive.

An account accessed by an EBT card is different from an “access device” evaluated in previous cases is that, unlike a gift card or credit card, an EBT card is subject to strict eligibility requirements, and subject to expiration or determination of ineligibly. EBT cards are issued by the federal government pursuant to Supplemental Nutrition Program (“SNAP”). SNAP was established under the Food Stamp Act of 1964. “SNAP benefits are provided to eligible households by means of electronic benefit transfer (‘EBT’) cards.” See 7 U.S.C. §§ 2012(i), 2016(a). “The EBT system is the modern replacement for traditional paper food stamps.” *Idias v. United States*, 359 F.3d 695, 696 (4th Cir. 2004). The federal program “utilizes plastic cards which are ‘swiped’

at the cash register like a credit card.” *McClain's Mkt. v. United States*, 411 F. Supp. 2d 772, 773 n.2 (N.D. Ohio 2005). EBT cards may be used “only to purchase food in retail food stores which have been approved for participation in [SNAP].” 7 U.S.C. § 2016(b). In Washington, the EBT card is known as a Quest Card, and funds are placed on the card or account once per month. WAC 388-412-0020, WAC 388-412-0025. Appendix A.

Eligibility to receive SNAP benefits—which are in turn accessed through the Quest EBT card—are not unending. Eligibility to receive SNAP is initially determined by the Department of Social and Health Services (“department”), and then reviewed at least once a year. See e.g. WAC 388-434-0005 regarding TANF benefits. Appendix A. At the time of eligibility review, the department requires the prospective recipient to complete a review, and the information is used to determine if the person continues to be eligible. If the person does not complete the eligibility review forms, the department considers the person to be withdrawing their request for continued assistance and cash benefits will end. WAC 388-434-0005. Eligibility requirements are contained at WAC 388-400-0005 through 388-400-0030. If an account is not recertified, the putative recipient is no longer eligible to receive SNAP benefits.

WAC 388-434-0005. See also 7 U.S.C. § 2015 (federal eligibility disqualifications for SNAP).

The appellant submits that this case is analogous to *State v. Rose*, 175 Wn.2d 10, 282 P.3d 1087 (2012). In *Rose*, police arrested Rose shortly after he visited the victim's home and he possessed what appeared to be a credit card in the victim's name. 175 Wn.2d at 12–13. At trial, the victim testified that she had received a credit card offer that included an inactivated credit card. *Rose*, 175 Wn.2d at 14–15. The card was never activated, there was no account associated with the card. *Rose*, 175 Wn.2d at 17. The Supreme Court held that the State had not demonstrated that the card constituted an access device. *Rose*, 175 Wn.2d at 18. Accordingly, a defendant may prevail by demonstrating that trial evidence proves that a credit card is not an “access device” when a defendant affirmatively establishes that the credit card was neither activated nor linked to an active account, the defendant can show that the card lacked the ability to obtain “something of value.” *Rose*, 175 Wn.2d at 17–18 & n.1.

The requirement that a card cannot constitute an “access device” if it is inactive, unusable, or unlinked to active accounts was reiterated, in the context of sentencing, by the Ninth Circuit in *United States v. Onyesoh*, 674 F.3d 1157 (9th Cir.2012). *Onyesoh* involved the sentencing of a defendant convicted of

possession of 15 or more unauthorized access devices. At sentencing, the government presented evidence that the defendant possessed 500 expired credit card numbers, and recommended a 12-level enhancement under the sentencing guidelines. *Id.* at 1158. The government arrived at this figure because a note to the sentencing guidelines assesses a minimum loss of \$500 per device in the defendant's possession. *Id.* The District Court agreed with the government's calculation, and applied the enhancement, determining that the expired credit card numbers constituted access devices without any further proof of their usability. *Id.* The Ninth Circuit reversed, holding that access devices must be usable and cannot be expired in order for the minimum loss to be factored into the sentencing calculus. *Id.* at 1159. Further, the Court held that the government carries the burden of demonstrating proof of usability. *Id.* at 1160. It may do this by, for example, offering expert testimony or offering evidence that the defendant was prepared to use the number in combination with another device. *Id.*

Here, the State failed to show that a State-issued Quest card was an "access device." Taking the evidence in a light most favorable to the State, the facts presented provided enough evidence for a fact finder to conclude that Mr. Fields took the lost purse containing the Quest EBT card, but failed to present

sufficient record that the card was an “access device” that could be used to obtain something of value—a required element of the definition of an “access device.” RCW 9A.56.010(1) The State failed to establish that the EBT card was associated with a non-expired account and in particular, whether Ms. Freeman was qualified to receive benefits at the time of the loss, and whether she was requalified by the department after the expiration of the eligibility period. See WAC 388-434-0005. Instead, the State merely proffered the card, and assumed that the card itself had some intrinsic value that did not require independent proof that the Quest account was not expired or that Ms. Freeman remained eligible to receive benefits. See *Rose* and *Onyeesoh, supra*.

The operation of an EBT card is unlike that of a credit card or even gift card, where there is an assurance that something of value can be obtained from an account by illegal use of the card. The Quest card, on the other hand, has a specific expiration period, at which time its ability to function as a method to obtain money or food is gone.

Here, unlike the accounts in *Nelson* (funded gift card), and *Clay*, (inactivated Mervyn credit card), and *Schloredt*, (sufficient showing of an “access device” if a reasonable inference can be made from the witness testimony that the cards were active), the State presented no testimony

regarding any balance on the Quest account and whether Ms. Freeman was the holder of a valid EBT card at the time of the incident.. Moreover, there was no evidence that the Quest account remained active, whether Ms. Freeman remained eligible to receive Quest benefits, or whether Ms. Freeman had complied with the eligibility review required by WAC 388-434-0005. Ms. Freeman's testimony consisted solely of her statement that an EBT operated "as a debit card" and was accessed by "a code." RP at 89.

The evidence was insufficient to show that the EBT card was a access device under RCW 9A.56.010(1). Thus, the conviction for second degree theft must be reversed and the charge dismissed with prejudice because there is insufficient evidence the EBT card could be used to access a Quest EBT account. *State v. DeVries*, 149 Wn.2d 842, 853, 72 P.3d 748 (2003); *State v. Anderson*, 96 Wn.2d 739, 742, 638 P.2d 1205 (1982).

2. THIS COURT SHOULD EXERCISE ITS DISCRETION AND DENY ANY REQUEST FOR COSTS.

If Mr. Fields does not substantially prevail on appeal; he asks that no appellate costs be authorized under title 14 RAP. See RAP 14.2. The record does not show that he had any assets, and in fact he was homeless until

shortly before the time of sentencing. RP at 161. The court imposed legal financial obligations including \$500.00 victim assessment and court costs of \$653.80, and \$100.00 DNA fee. CP 17.

The trial court found him indigent for purposes of this appeal. CP 4-5. There has been no order finding Mr. Fields' financial condition has improved or is likely to improve since that finding.

Under RAP 15.2(f), "The appellate court will give a party the benefits of an order of indigency throughout the review unless the trial court finds the party's financial condition has improved to the extent that the party is no longer indigent." This Court has discretion to deny the State's request for appellate costs in the event this appeal is unsuccessful. Under RCW 10.73.160(1), appellate courts "may require an adult offender convicted of an offense to pay appellate costs." "[T]he word 'may' has a permissive or discretionary meaning." *State v. Brown*, 139 Wn.2d 757, 789, 991 P.2d 615 (2000). The commissioner or clerk "will" award costs to the State if the State is the substantially prevailing party on review, "unless the appellate court directs otherwise in its decision terminating review." RAP 14.2. Thus, this Court has discretion to direct that costs not be awarded to the State. *State v. Sinclair*, 192 Wn. App. 380, 367 P.3d 612 (2016). Our Supreme Court

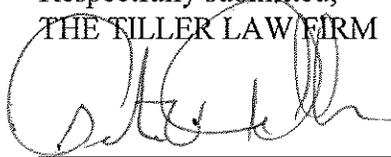
has rejected the concept that discretion should be exercised only in “compelling circumstances.” *State v. Nolan*, 141 Wn.2d 620, 628, 8 P.3d 300 (2000).

E. CONCLUSION

Based on the foregoing arguments, Mr. Fields’ conviction should be reversed and his case remanded for dismissal with prejudice.

DATED: June 15, 2017.

Respectfully submitted,
THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read "Peter B. Tiller", is written over a horizontal line. The signature is cursive and somewhat stylized.

PETER B. TILLER-WSBA 20835
Of Attorneys for Melwyn Fields

CERTIFICATE OF SERVICE

The undersigned certifies that on June 15, 2017, that this Appellant's Opening Brief was sent by the JIS link to Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and copies were mailed to Jason S. Richards, at the mason county prosecutor's office and Appellant , Melwyn Van Fields, by first class mail, postage prepaid to the following:

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This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on June 15, 2017.



PETER B. TILLER

APPENDIX A

WAC 388-412-0025

How do I receive my benefits?

- (1) You can choose to get your cash benefits by:
 - (a) Electronic benefit transfer (EBT), which is a direct deposit into a DSHS account that you access with a debit card called the Washington EBT Quest card;
 - (b) Electronic funds transfer (EFT), which is a direct deposit into your own bank account;
 - (c) A warrant (check) to an approved authorized representative (AREP);
 - (d) A warrant (check) to a payee who is not approved for direct deposit; or
 - (e) A warrant (check) to you if you get:
 - (i) Diversion cash assistance (DCA) that is not paid directly to a vendor;
 - (ii) Ongoing additional requirements (OAR) that cannot be paid directly to a vendor; or
 - (iii) Clothing and personal incidentals (CPI) payments.
- (2) We send your **basic food** benefits to you by EBT.
- (3) EBT accounts:
 - (a) We set up an EBT account for the head of household of each assistance unit (AU) that receives benefits by EBT.
 - (b) You use a Quest debit card to access your benefits in your EBT account. You select a personal identification number (PIN) that you must enter when using this card.
 - (c) You must use your cash and basic food benefits from your EBT account. We cannot transfer cash to your bank account or change cash or basic food benefits to checks.
 - (d) Unused EBT benefits: If you do not use your EBT account within three hundred sixty-five days, we cancel the cash and basic food benefits on your account.
- (4) **Replacing benefits:**
 - (a) Replacing basic food benefits:
 - (i) We **can replace** cancelled benefits we deposited **less than three hundred sixty-five days** from the date you ask for us to replace your benefits.
 - (ii) We **cannot replace** cancelled benefits deposited **three hundred sixty-five or more days** from the date you ask us to

replace your benefits.

(b) **Replacing cash benefits:** We can replace cancelled cash benefits for you or another member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(c) **Replacing cash warrants:**

(i) If we issued you cash benefits as a warrant we can replace these benefits for you or a member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(ii) If we issued the benefits as a warrant one hundred sixty or fewer days ago, your local office can replace the warrant.

(iii) If we issued the benefits as a warrant more than one hundred sixty days ago, the Office of Accounting Services (OAS) can replace the warrant. We will contact OAS with the request.

(5) **Correcting your EBT balance:** When you make a purchase with your EBT card a system error can occur where the purchase amount is not deducted from your EBT account. When the error is discovered the following will happen:

(a) You will be notified in writing of the system error before the money is removed from your account; and

(b) You will have ninety days to request an administrative hearing. If you ask for an administrative hearing within ten calendar days, the money will not be removed from your EBT account unless:

(i) You withdraw your administrative hearing request in writing;

(ii) You do not follow through with the administrative hearing process; or

(iii) The administrative law judge tells us in writing to remove the money.

WAC 388-400-0005

Who is eligible for temporary assistance for needy families?

(1) You can get temporary assistance for needy families (TANF), if you:

(a) Can be in a TANF/SFA assistance unit as allowed under WAC 388-408-0015 through 388-408-0030;

(b) Meet the citizenship/alien status requirements of WAC 388-424-0010;

(c) Live in the state of Washington. A child must live with a caretaker relative, guardian, or custodian who meets the state residency requirements of WAC 388-468-0005;

(d) Do not live in a public institution unless specifically allowed

under RCW 74.08.025;

(e) Meet TANF/SFA:

- (i) Income requirements under chapter 388-450 WAC;
- (ii) Resource requirements under chapter 388-470 WAC; and
- (iii) Transfer of property requirements under chapter 388-488 WAC.

(f) Assign your rights to child support as required under WAC 388-422-0005;

(g) Cooperate with the division of child support (DCS) as required under WAC 388-422-0010 by helping them:

- (i) Prove who is the father of children applying for or getting TANF or SFA; and
- (ii) Collect child support.

(h) Tell us your Social Security number as required under WAC 388-476-0005;

(i) Cooperate in a review of your eligibility as required under WAC 388-434-0005;

(j) Cooperate in a quality assurance review as required under WAC 388-464-0001;

(k) Participate in the WorkFirst program as required under chapter 388-310 WAC;

(l) Report changes of circumstances as required under WAC 388-418-0005; and

(m) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(2) If you apply for TANF, have not received TANF or SFA within the past thirty days, and will be a mandatory WorkFirst participant as described in WAC 388-310-0200 once approved, you must complete a WorkFirst orientation before we approve your application.

(3) If you are an adult, you must have an eligible child living with you or you must be pregnant and meet the requirements of WAC 388-462-0010.

(4) If you are an unmarried pregnant teen or teen parent:

(a) Your living arrangements must meet the requirements of WAC 388-486-0005; and

(b) You must attend school as required under WAC 388-486-0010.

(5) In addition to rules listed in subsection (1) of this section, a child must meet the following rules to get TANF:

(a) Meet the age requirements under WAC 388-404-0005; and

(b) Live in the home of a relative, court-ordered guardian, court-

ordered custodian, or other adult acting in loco parentis as required under WAC 388-454-0005; or

(c) If the child lives with a parent or other adult relative that provides care for the child, that adult cannot have used up their sixty-month lifetime limit of TANF or SFA cash benefits as defined in WAC 388-484-0005; or

(d) If the child lives with a parent who provides care for the child, that adult cannot have been permanently disqualified from receiving TANF/SFA due to noncompliance sanction as defined in WAC 388-310-1600.

(6) You cannot get TANF if you have been:

(a) Convicted of certain felonies and other crimes under WAC 388-442-0010; or

(b) Convicted of unlawful practices to get public assistance under WAC 388-446-0005 or 388-446-0010.

(7) If you are a client in a household which is eligible for a tribal TANF program, you cannot receive state and tribal TANF in the same month.

THE TILLER LAW FIRM

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Transmittal Information

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Appellate Court Case Title: State of Washington, Respondent v Melwyn Van Fields, Appellant
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