



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Earl Ray Tomblin  
Governor

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

June 27, 2011

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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 June 13, 2011 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: An Intentional Program Violation consists of having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of the Food Stamp Act, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. 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 §273.16).

Information submitted at the hearing demonstrates that you intentionally provided false or misleading information about your household composition in order to receive SNAP benefits to which you were not legally entitled.

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to apply a 1-year SNAP disqualification penalty against you based on an Intentional Program Violation. This disqualification will begin effective August 1, 2011.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Melissa Barr, RI, WVDHHR

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

**INRE: -----,**

**DENFENDANT,**

**v.**

**ACTION NUMBER: 11-BOR-1022**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**RESPONDENT.**

**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 June 13, 2011.

**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:**

Melissa Barr, Repayment Investigator (RI), WVDHHR

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in the Supplemental Nutrition Assistance Program (SNAP).

**V. APPLICABLE POLICY:**

7 CFR §273.16 USDA Code of Federal Regulations  
Common Chapters Manual Chapter 700, Appendix A  
West Virginia Income Maintenance Manual, Chapters 1.2, 2.2, 9.1, 10.4 & 20.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Benefit Recovery Referral dated 9/13/10 and 4/4/11
- D-2 IG-BR-44 (Notification of Intent to Disqualify) and IG-BR-44a (Waiver) – 4/4/11
- D-3 7 CFR §273.16 USDA Code of Federal Regulations
- D-4 Information received from -----(Received 2/5/10) and Case Comments dated 3/17/09
- D-5 Combined Application and Review Form (5/11/09), Rights and Responsibilities (5/11/09), Case Comments (5/11/09) and Notice of Decision (5/22/09)
- D-6 Case Comments (6/12/09)
- D-7 Combined Application and Review Form (10/27/09), Rights and Responsibilities (10/27/09), Case Comments (10/27/09) and Notice of Decision (10/28/09)
- D-8 Case Comments (3/16/10)
- D-9 WV Income Maintenance Manual, Chapter 1.2
- D-10 WV Income Maintenance Manual, Chapter 2.2

**VII. FINDINGS OF FACT:**

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from the West Virginia Department of Health and Human Resources, hereinafter Department, on April 20, 2011. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a period of one (1) year.
- 2) Notification of the June 13, 2011 hearing was mailed to the Defendant on May 9, 2011 via First Class U. S. Mail as the Defendant is a current recipient of benefits through the Department and resides at a confirmed address.

- 3) The hearing convened as scheduled at 11:00 a.m., and as of 11:15 a.m., the Defendant failed to appear. 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) The Department submitted Exhibit D-2 to demonstrate the Defendant was notified via a Notification of Intent to Disqualify on or about April 4, 2011 and advised that she intentionally violated the Food Stamp (now SNAP) regulations when she completed applications in May 2009 (D-5) and October 2009 (D-7) and reported -----and ----- were residing in her home.
- 5) Exhibit D-4 includes information from -----indicating that he and the Defendant resided together until the Defendant and her children moved to East Park Mobile Home Village in March 2009. (Also see Case Comments dated 3/17/09 wherein the Defendant phoned the Department and reported her change of address.) This information further indicates that in July 2009, the Defendant's child, -----, left the Defendant's home and moved in with his father (-----).
- 6) The Department submitted Exhibit D-5 - Combined Application and Review Form (CAF), Rights and Responsibilities, and Case Comments dated May 11, 2009, as well as a Notice of Decision dated May 22, 2009 – to show that the Defendant reported -----was residing in her home and that she included him in her application for SNAP benefits in May 2009. The Defendant did not report -----out of her home until June 12, 2009 (Exhibit D-6).
- 7) On October 27, 2009, the Defendant completed her SNAP review (D-7) and reported that ----- (Defendant's child) was a member of her household and included him in the SNAP benefits. According to the information provided in Exhibit D-4, this child had been residing with his father since July 2009. The Defendant's signature is again found on the Rights and Responsibilities form (DFA-RR-1) and dated October 27, 2009.
- 8) The Defendant signed the Rights and Responsibilities form on the day of application (May 11, 2009 and October 27, 2009). The Defendant marked "yes" to item #4 which states:

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 Food Stamp benefits as follows: First Offense – one year; Second Offense – two years; Third Offense-permanently. In addition, I will have to repay any benefits received for which I was not eligible.

By signing the DFA-RR-1, the Defendant certified that they read, understood, and accepted the rights and responsibilities, and that all of the information provided was true and correct.

- 9) The Department contends that by providing false and misleading information about her household composition - the number of individuals included in her SNAP assistance group - the Defendant received SNAP benefits to which she was not legally entitled.
- 10) West Virginia Income Maintenance Manual, Chapter 10.4:  
This section contains policy relating income disregards and deductions and to the computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and the number in the benefit group {emphasis added}.
- 11) West Virginia Income Maintenance Manual, Chapter 1.2 (E):  
The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 12) West Virginia Income Maintenance Manual, Chapter 2.2.B states that all SNAP AG's must report changes related to eligibility and benefit amount at application and redetermination.
- 13) West Virginia Income Maintenance Manual, Chapter 20.2:  
When a AG (benefit group) has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.
- 14) West Virginia Income Maintenance Manual, Chapter 20.2 (C) (2):  
Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (assistance group) members who committed the IPV. The penalties are as follows: (Chapter 9.1, A, 2, h) 1st Offense: 1 year (Disqualification), 2<sup>nd</sup> Offense: 2 years (Disqualification), 3<sup>rd</sup> Offense: Permanent
- 15) Common Chapters Manual 740.11.D states as follows:

Intentional Program Violation - For the purpose of determining through an Administrative Disqualification Hearing whether or not a person has committed an Intentional Program Violation, the following criteria will be used. 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 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.

- 16) Common Chapters Manual 740.22.M states that the Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence that demonstrates that the defendant committed, and intended to commit, Intentional Program Violation as defined in Section 740.11. The Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing. In rendering a decision, the Hearing Officer shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and court orders. The decision shall include reference to all pertinent law or policy.

### **VIII. CONCLUSIONS OF LAW:**

- 1) The policy and regulations that govern the SNAP state that a program violation has occurred when an individual intentionally makes a false or misleading statement, or misrepresented, concealed or withheld facts relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.
- 2) The Defendant was notified timely of the June 11, 2011 Administrative Disqualification Hearing but failed to appear and refute the evidence submitted in support of an IPV. The evidence confirms the Defendant was untruthful when she applied for SNAP benefits on two different occasions for individuals who were no longer residing in her home. The Defendant knowingly provided false and misleading information about her household composition in order to receive SNAP benefits to which she was not legally entitled. This clearly establishes intent.
- 3) There is clear and convincing evidence that the Defendant committed an Intentional Program Violation as defined in the SNAP policy and regulations.
- 4) Pursuant to SNAP policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first offense is one (1) year.
- 5) Only the Defendant is subject to this disqualification. The one (1) year disqualification will begin effective August 1, 2011.

### **IX. DECISION:**

The Department's proposal to apply a one (1) year SNAP benefit disqualification is **upheld.**

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_ Day of June, 2011.**

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**Thomas E. Arnett  
State Hearing Officer**