



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

June 16, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing (ADH) held June 16, 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: Intentional Program Violations 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 [SNAP] Act, the SNAP Regulations, or any State statute relating 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).

The information submitted at the hearing showed that you intentionally provided false information about your household's income during your November 2010 SNAP review period in order to receive SNAP for which you were not entitled.

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against you based on an Intentional Program Violation. Your penalty begins August 1, 2011.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/Natasha Jemerison, Kanawha DHHR

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 11-BOR-1036

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

Movant,

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 16, 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:

Natasha Jemerison, Department Representative

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Defendant committed an intentional program violation and should be disqualified for one year from participation in 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 §1.2, 9.1.A.2.h and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Benefit Recovery Referral Screen from Department's computer system dated March 30, 2011
- D-2 West Virginia Income Maintenance Manual §1.2.E
- D-3 Food Stamp Claim Determination forms and supporting documents
- D-4 Code of Federal Regulations §7 CFR273.16
- D-5 Self-completed Application signed by Defendant on November 2, 2010 with supporting documents
- D-6 Income Verification from [REDACTED] dated December 13, 2010
- D-7 West Virginia Income Maintenance Manual Section 2.2.
- D-8 West Virginia Income Maintenance Manual Section 20.6
- D-9 Notification letters dated March 30, 2011

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing, hereinafter ADH, was received by the Board of Review from the Department of Health and Human Resources, hereinafter Department, on April 29, 2011. The Department contends that the Defendant has committed an Intentional Program Violation, hereinafter IPV, and made a fraudulent statement or misrepresentation regarding her household income in order to receive SNAP, and is recommending that she be disqualified from participation in SNAP for a period of one (1) year.
- 2) Notification of the June 16, 2011 hearing was mailed to the Defendant on or about May 5, 2011 via first class mail delivery, as the Defendant is a current recipient of benefits through the Department and resides at an address known to be good by the Department.
- 3) The hearing was convened as scheduled at 9:00 a.m., and as of 9:23 a.m. the Defendant failed to appear or notify the Board of Review of any conflict preventing her from appearing. 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) On or about March 30, 2011 the Department sent the Defendant a Notification of Intent to Disqualify (D-9) form, indicating that it had reason to believe she intentionally violated a SNAP rule. The form also included the following:

Based on the evidence developed through our investigation, the agency believes that ----- intentionally violated [SNAP] by: not reporting -----'s earned income from [REDACTED]. The evidence to prove this allegation consists of application, verification of income.

- 5) The Department presented evidence to show that the Defendant self-completed a SNAP application review form (D-5) on November 2, 2010. She reported a five (5) person household which included an individual named -----, who is purported by the Department to be the Defendant's husband, ----- . The Defendant reported no earned income for ----- . She signed the application indicating she understood her responsibility to report accurate and truthful information, and by signing she also certified that all statements provided on the form were reviewed by her or read to her and that she understood them. She further certified that all information provided by her on the form was true and correct.
- 6) Case comments (D-3) dated November 15, 2010 reflect that the Department's case worker documented a conversation which occurred between herself and the Defendant on that date. She documented that she completed the telephone conversation with the Defendant on that date in order to complete the SNAP review process. She also documented that the Defendant reported a household of five (5) individuals, one of which included her husband. She did not document any report of earned income for the Defendant's husband. The Department's later case comments on November 19, 2010 indicate that, after reviewing the data exchange cross-match screens, it determined that "-----" is employed and that the information was not reported. Comparison of the information entered on the Defendant's self-completed application form (D-5) to the Department's computer screen printout which lists the case members and their demographic information (D-3) shows that the individual listed on the Defendant's self-completed application (D-5) as "-----" and the individual the Department lists as "-----" both share the same birth date.
- 7) The Department subsequently verified (D-6) that "-----" began employment with the [REDACTED] on September 15, 2010. This verification shows that ----- utilizes the same physical address as the Defendant, and that he receives regular paychecks from the company every two weeks. This verification also shows that this individual shares the same social security number as that listed for "-----" in the Department's computer system (D-3). During the month of the November 2010 SNAP review period, ----- received two paychecks from the company totaling one thousand two hundred eighty-eight dollars and twenty six cents (\$1288.26). The Defendant did not report this information on her self-completed SNAP review form on November 2, 2010; nor did she report the information during the November 15, 2010 telephone conversation with a Department worker.
- 8) West Virginia Income Maintenance Manual §1.2 (E) states that it is the client's responsibility to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 9) West Virginia Income Maintenance Manual § 20.2 (C) (2) states in pertinent part:

IPV's include making false or misleading statement, misrepresentations, concealing or withholding information, and committing any act that violates the [SNAP] Act of 1977, [SNAP] regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of [SNAP].

The individual(s) who is found to have committed an IPV is ineligible to participate in the program for a specified time, depending on the number of offenses committed.

Once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV.

- 10) Common Chapters Manual 700, Appendix A, Section B, provides that an IPV 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 [SNAP] Act, the SNAP Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.
- 11) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer shall base the determination of IPV on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV as defined in Section B of this Appendix.
- 12) The Defendant signed an application form (D-5) on November 2, 2010 thereby acknowledging the following pertinent information:
 - 25) I understand, that I may be required to repay any benefits paid to me or on my behalf for which I was not eligible because of unintentional errors made by me or by DHHR. I also understand that if I give incorrect or false information or if I fail to report changes that I am required to report, I may be required to repay any benefits I receive and I may also be prosecuted for fraud. I also understand that any person who obtains or attempts to obtain benefits from DHHR by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device can be charged with fraud. Upon a conviction punishment may be a fine up to \$5,000 and/or a jail sentence of 5 years in jail. Federal penalties may include a maximum fine of \$250,000 and a jail sentence of up to 20 years.
 - 26) I certify that all statements on this form have been read by me or read to me and that I understand them. I certify that all information I have given is true and correct and I accept these responsibilities
- 13) West Virginia Income Maintenance Manual §9.1.A.2.h states:

Intentional Program Violation (IPV)

Persons who have been found guilty of an IPV are disqualified as follows:

- 1st Offense: 1 year
- 2nd Offense: 2 years
- 3rd Offense: Permanent

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern SNAP state that a SNAP 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 regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an IPV.
- 3) The Defendant clearly was aware of her responsibility to report truthful and accurate information and the penalties involved for failing to do so. She read and signed the application forms during the review process on November 2, 2010 which clearly informed her of these responsibilities.
- 4) The evidence supports that “-----” and “-----” are one and the same individual, and that he was a member of the Defendant’s SNAP case during the November 2010 review month. The Defendant listed “-----” on her self-completed application review form (D-5), along with his birth date, and indicated him to be a member of her household. He is the only other adult listed as a member of the Defendant’s household at that time, and the birth date provided by the Defendant on the form (D-5) for him matches the birth date recorded by the Department as belonging to “-----.” She also reported during her telephone conversation with the Department (D-3) that her “husband” was a member of her household. Additionally, the Department’s verification from the employer (D-6) shows that “-----” lives at the same residential address as the Defendant; their record of his social security number also matches the Department’s recorded social security number for “-----.” The Defendant clearly was obligated to report his income during the review process.
- 5) The evidence is also clear in that the Defendant intentionally reported false information about her household income in order to receive SNAP. She did not report during the self-completion of the November 2, 2010 SNAP application review form that ----- had earned income, when in fact he was employed with [REDACTED] and receiving regular pay checks from the company. She also did not report this fact when she completed a telephone interview with a Department worker on November 15, 2010. ----- received two pay checks during the month of November 2010.
- 6) The Department was correct in its determination that the Defendant has committed an Intentional Program Violation by intentionally reporting false information about her household income.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**.
The penalty will begin May 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of June, 2011.

**Cheryl Henson
State Hearing Officer**