



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Board of Review  
P.O. Box 1736  
Romney, WV 26757

Earl Ray Tomblin  
Governor

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

July 19, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your Supplemental Nutrition Assistance Program Administrative Disqualification Hearing held July 8, 2011. The purpose of this hearing was to determine whether or not you intentionally committed an Intentional Program Violation.

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 the Supplemental Nutrition Assistance Program is based on current policy and regulations. These regulations provide that 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).

The information which was submitted at your hearing revealed that you falsely reported your son as residing in your household at your SNAP application and recertifications for benefits, when in fact custody of your son had been awarded to his mother.

It is the decision of the State Hearing Officer to Uphold the proposal of the Department to implement a 12 month Intentional Program Violation. The disqualification penalty will begin on September 1, 2011 and will run concurrently for the next 12 months.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Lori Woodward, Repayment Investigator

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

**IN RE: ----**

**Defendant,**

**v.**

**ACTION NO.: 11-BOR-1252**

**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 a fair 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 fair hearing was convened on July 8, 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:**

Lori Woodward, Repayment Investigator

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Defendant committed an Intentional Program Violation and should be disqualified for two years from participation in the Supplemental Nutrition Assistance Program or SNAP.

**V. APPLICABLE POLICY:**

Code of Federal Regulations, 7 CFR § 273.16  
Common Chapters Manual, Chapter 700  
West Virginia Income Maintenance Manual, Chapter 20.2; Chapter 9.1.A.2.h

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

**Department's Exhibits:**

- D-1 Computer printout of case comments dated February 17, 2005
- D-2 Combined Application and Review Form with associated Rights and Responsibilities dated July 15, 2005
- D-3 Combined Application and Review Form with associated Rights and Responsibilities dated April 26, 2006
- D-4 Combined Application and Review Form with associated Rights and Responsibilities dated September 28, 2006
- D-5 Combined Application and Review Form with associated Rights and Responsibilities dated April 9, 2007
- D-6 Combined Application and Review Form with associated Rights and Responsibilities dated October 19, 2007
- D-7 Computer printout of school enrollment
- D-8 Sworn Statement to Gwendolyn Grove, Investigator dated February 25, 2009
- D-9 Attendance information from ----- IV from [REDACTED] County [REDACTED] Schools
- D-10 Written Statement from [REDACTED] [REDACTED] (West Virginia) Schools
- D-11 Food Stamp Claim Determination
- D-12 Cash Assistance Claim Determination
- D-13 West Virginia Department of Welfare Memorandum dated April 8, 1982
- D-14 Notification of Intent to Disqualify dated April 21, 2011
- D-15 West Virginia Income Maintenance Manual Chapter 1.2, 1.4, 2.2, 9.1
- D-16 West Virginia Income Maintenance Manual Chapter 20.2 and Common Chapters 740.11

**VII. FINDINGS OF FACT:**

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on May 31, 2011. The Department contends that the Defendant committed an Intentional Program Violation (IPV) and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twenty-four (24) month period.
- 2) On June 9, 2011, a Notice of Scheduled Hearing was mailed to the Defendant, via certified restricted mail delivery to the reported address of -----, [REDACTED] West Virginia [REDACTED]. On June 13, 2011, the State Hearing Officer received notice from the United States Postal Service that the Defendant received the notice on June 10, 2011.
- 3) The hearing was convened as scheduled at 11:45 A.M., on the requested date, as of 12:00 P.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

- 4) On April 21, 2011, the Department issued the Defendant Exhibit D-14, Notification of Intent to Disqualify, indicating that the Department had reason to believe the Defendant intentionally violated a SNAP rule. This exhibit documents in pertinent part:

Based on the evidence developed through our investigation, the agency believes that -----, III intentionally violated the food stamp program by falsely claiming son ----- IV in his household 2005-2008.

- 5) The Department contends that the Defendant made false statements by reporting his son, ----- IV, as a resident of his household at an application for SNAP benefits on February 17, 2005 and subsequent SNAP benefit recertifications on July 15, 2005 (Exhibit D-2), April 26, 2006 (Exhibit D-3), September 28, 2006 (Exhibit D-4), April 9, 2007 (Exhibit D-5) and October 19, 2007.
- 6) Lori Woodward, Repayment Investigator presented Exhibit D-13, West Virginia Department of Welfare Memorandum dated April 8, 1982 to demonstrate that the Defendant had previously committed an Intentional Program Violation and his most recent actions constituted a second violation of program rules. However, the exhibit presented by the Department to support its position that the Defendant had committed a second offense Intentional Program Violation documents that an individual, who was not the Defendant, had been disqualified in 1982. Exhibits D-2 through D-5, documents the Defendant's birth date as August 14, 1971. In review of the evidence, the Defendant would have been approximately ten years old during the timeframe in which violation documented in Exhibit D-13 was instituted and would not have been subjected to any prior violations or disqualification periods. There is no evidence to support a first violation of the program rules against the Defendant -----, III; therefore, the Defendant shall be evaluated for a lesser charge of a first Intentional Program Violation and a twelve (12) month disqualification from participation in SNAP.
- 7) Ms. Woodward testified that the Defendant completed a SNAP application on February 17, 2005, and reported that the household consisted of himself and his son. Ms. Woodward testified that the Defendant completed additional SNAP recertifications on July 15, 2005 (Exhibit D-2), April 26, 2006 (Exhibit D-3), September 28, 2006 (Exhibit D-4), April 9, 2007 (Exhibit D-5) and October 19, 2007. At each recertification for SNAP benefits, the Defendant reported that his son was a resident of the household and was currently enrolled as a full-time student with the [REDACTED] County (West Virginia) school system.
- 8) Ms. Woodward testified that the Department became aware that the Defendant's son was not residing with the Defendant and had been in the custody of his mother. Exhibit D-8, Sworn Statement to Gwendolyn Grove, Investigator dated February 25, 2009 documents that [REDACTED] ----- IV's mother, had custody of the child through the state of [REDACTED] and that the child had previously been enrolled in school in the state of [REDACTED] and was currently a senior at the time of the statement.
- 9) Ms. Woodward presented Exhibit D-9, Attendance Information for ----- IV from [REDACTED] County [REDACTED] Schools to demonstrate that the Defendant's son had been enrolled with [REDACTED] County Schools since kindergarten and documents an address for -----, IV of

██████████ Additionally, Ms. Woodward presented Exhibit D-10, Written Statement from ██████████ ██████████ County (West Virginia) Schools which documents that no enrollment records were found for -----, IV with the ██████████ County (West Virginia) Board of Education.

- 10) The Defendant completed and signed the Rights and Responsibilities section of each recertification (Exhibit D-2 through D-5) for SNAP benefits. The Defendant specifically acknowledged the following:

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 the information I have given is true and correct and I accept these responsibilities.

- 11) Ms. Woodward presented Exhibit D-11, Food Stamp Claim Determination worksheet to demonstrate that by providing false information concerning his son's residence, an overpayment of SNAP benefits was issued to the Defendant in the amount of \$4939.00 from February 2005 through April 2008. Additionally, Ms. Woodward presented Exhibit D-12, Cash Assistance Claim Determination to demonstrate that the false information provided by the Defendant resulted in an overpayment of cash assistance of 50.00 for the month of August 2005.

- 12) West Virginia Income Maintenance Manual Chapter 1.2 indicates:

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility.

- 13) West Virginia Income Maintenance Manual, Chapter 9.1 indicates:

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

- 1<sup>st</sup> Offense: 1 Year
- 2<sup>nd</sup> Offense: 2 Years
- 3<sup>rd</sup> Offense: Permanent

- 14) 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.

- 15) Common Chapters Manual 740.22.M states as follows:

Decision – 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, an Intentional Program Violation as defined in Section 740.11 of this Chapter. 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. If the Hearing Officer rules that the defendant committed an Intentional Program Violation, he or she will include the length and the beginning date of the disqualification penalty.

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

- 1) The policy and regulations that govern SNAP benefits dictate 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 regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) The evidence reveals that the Defendant initially made a false statement at his February 17, 2005 SNAP application by falsely reporting his son as a resident of the household. Furthermore, the Defendant demonstrated intent to mislead the Department by making additional false statements concerning his son's residence at subsequent SNAP benefit recertifications in July 2005, April 2006, September 2006, April 2007 and October 2007. The evidence is clear that the Defendant reported his son as a member of his household, when in fact the child was in his mother's custody and enrolled in school in the state of [REDACTED]. The result of such willful misrepresentation at his application and recertifications for SNAP benefits was an overpayment in SNAP benefits for which the Defendant was ineligible to receive.
- 4) In accordance with 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) The Defendant is the only assistance group member subject to said disqualification penalty. The one year disqualification penalty will begin September 1, 2011 and will run concurrently for the next 12 months.

**IX. DECISION:**

Intentionally making a false or misleading statement or misrepresenting facts to secure SNAP benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Department's proposal to apply a twenty-four (24) month disqualification is denied. However, the Hearing Officer finds that a first offense Intentional Program Violation, a twelve (12) month disqualification is warranted.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of July, 2011.**

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**Eric L. Phillips**  
**State Hearing Officer**