



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

July 27, 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 July 14, 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 does not show clearly and convincingly that you intentionally provided false information about your household's circumstances in order to receive SNAP for which you were not eligible.

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

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-1256

**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 July 14, 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 April 6, 2011, one (1) page
- D-2 West Virginia Income Maintenance Manual §1.2.E, two (2) pages
- D-3 [SNAP] Claim Determination forms and supporting documents, twelve (12) pages
- D-4 Code of Federal Regulations §7CFR273.16, three (3) pages
- D-5 Online application dated June 2, 2010, eleven (11) pages
- D-6 Employer verification, utility bill, Department of Motor Vehicles' computer screens, Department computer screens, eight (8) pages
- D-7 West Virginia Income Maintenance Manual §2.2, two (2) pages
- D-8 West Virginia Income Maintenance Manual §20.6, two (2) pages
- D-9 Notification letters dated April 6, 2011, five (5) pages
- D-10 Sworn written statements dated January 18, 2011, four (4) pages
- D-11 Typed letter from ----, undated, one (1) page

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 June 2, 2011. The Department contends that the Defendant has committed an Intentional Program Violation, hereinafter IPV, and made a fraudulent statement or withheld information regarding her household composition 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 July 14, 2011 hearing was mailed to the Defendant on or about June 14, 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 1:00 p.m., and as of 1:19 p.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 April 6, 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 by not reporting that -----, the father of one of her children, lived in her household and that he received earned income from employment.
- 5) The Department presented evidence to show that the Defendant completed an online application for SNAP (D-5) on June 2, 2010 at which time she did not report that -----lived in her home. She also did not report any earned income for him. She stated on the application that no one in her household was employed. She stated that she was responsible for paying utility bills, including electricity, and that no one outside her household was paying these bills on her behalf. She electronically signed the application certifying that all statements on the form had been read by her, or read to her, and that she understood the questions. She further certified that all the information provided by her was true and correct, and that she understood that it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which she was not by law entitled. Although the Department purported during the hearing that other rights and responsibilities forms were completed by the Defendant at the time of this application, none were provided as evidence.
- 6) Evidence in the Department's Exhibit D-3 shows that a Department worker entered case comments into the Department's computer system on December 23, 2010 regarding a SNAP interview completed with the Defendant on that date. The relevant comments read as follows:

----- in today to complete the SNAP [redetermination]. This is a home of two adults and 3 children. There is no earned income and the unearned is child support of 520 for ----- and ----- and SSA [social security administration] for [REDACTED] amount of 773. She claims 2 checking and a savings and one veh [vehicle]...

This evidence shows that the Defendant was in the Department's office to complete a SNAP redetermination interview on December 23, 2010. The documentation shows that the Defendant claimed to have two checking accounts and a savings account along with one vehicle. The documentation does not show that the Defendant made any statements regarding her household composition, and simply provides, "This is a home of two adults and 3 children." The Department did not present written evidence to support that the Defendant signed any

application documents on that date to show what she reported or did not report regarding household composition and/or earned income.

- 7) Also included in the Department's Exhibit D-3 is an Employer Wage Data printout from the Department's computer system which shows an earnings history for -----from various employers. This printout shows that -----received earned income from [REDACTED] [REDACTED] during the second quarter of the year 2010. The printout does not indicate monthly earned income; therefore, it is not possible from this evidence to show conclusively whether -----received earned income from this company during the month of application, that being June 2010. The printout shows that the second quarter of 2010 was the last quarter in which -----received earnings from this employer, and that his earnings for the quarter totaled eight thousand two hundred eighty-five dollars and eighteen cents (\$8285.18). The printout shows that -----began receiving earnings from a company listed as [REDACTED] LLC beginning in the third quarter of 2010. His earnings from this new employer totaled eight thousand nine hundred thirty-six dollars and thirty four cents (\$8936.34) during the third quarter of 2010.
- 8) The Department subsequently obtained two (2) sworn written statements (D-10) on January 18, 2011 from neighbors living in the community of the Defendant. The statements are from "line of site" neighbors, meaning the neighbors can view the Defendant's home from their property. Both neighbors confirmed that the Defendant lives with ----- . It is unclear from these statements, however, exactly when -----began living with the Defendant at this address. One neighbor stated, "...they have lived there about a year," but then added, "...around the spring of 2010." The other neighbor stated, "...they have lived there a little over a year, around the beginning of 2010," but then added, "the spring." Although these statements show that these neighbors believed -----was living with the Defendant on the date the statements were provided, they do not show conclusively that he was living with the Defendant on June 2, 2010 when she completed the online SNAP application. Both neighbors appear unclear as to when he actually began living with the Defendant and provided broad estimates which range from "a little over a year" to "around the spring of 2010."
- 9) Additional evidence dated January 20, 2011 shows (D-6) that -----is employed with [REDACTED] [REDACTED] and that he listed his address with the company as the same as the Defendant's, and that he also receives regular paychecks from the company. This verification shows that he began employment with the company on July 1, 2010, which is after the Defendant completed the June 2, 2010 SNAP application. This employer appears to be the same employer listed as [REDACTED] LLC on the Department's Exhibit D-3, as the amount of income listed is consistent with income earned from this employer during the same timeframe.
- 10) Additional evidence shows (D-6) that the Defendant' utility bill is listed in -----'s name. A copy of the Defendant's January 2011 electric bill shows that it is listed in -----'s name. The service address is listed as the Defendant's residential address. This electric bill is dated several months after the Defendant's June 2, 2010 SNAP application and lends little in support of -----living in the Defendant's home at the time of the June 2, 2010 SNAP application.

- 11) Additional evidence (D-6) from the West Virginia Department of Motor Vehicle's computer data records shows that the Defendant and -----registered a vehicle jointly with the agency on September 24, 2007, and that the registration was currently active as of October 20, 2010. This registration occurred several years prior to the Defendant's June 2, 2010 SNAP application, and although it is still active, it lends little in support of -----living in the Defendant's home at that time of the June 2010 SNAP application.. Additional evidence from these records shows that -----listed his address on his driver's license the same as the Defendant's residential address. The license was issued on October 12, 2010, which was after the Defendant's June 2, 2010 SNAP application was completed.
- 12) Additional evidence (D-6) shows that the Department's computer system on January 26, 2011 listed -----as an absent parent in its child support data system. -----'s mailing address in this system was listed as the Defendant's residential address. Additionally, -----'s address also matched the Defendant's in the Department's new employment (NEW HIRE INFORMATION) data screens as of July 22, 2010. Both these dates are after the June 2, 2010 SNAP application was submitted, and lend little in support of -----living in the Defendant's home at the time of the June 2, 2010 SNAP application.
- 13) Additional evidence (D-11) shows that -----signed an undated typed letter which contained the following:

To Whom it May Concern:

----- is now responsible for the electric bill for the address of: [REDACTED]
[REDACTED] The account will be switched over into her name as of
July 22nd 2009.

It is unclear when this letter was written. It supports that -----intended for the Defendant to take ownership of the electric bill during the month of July 2009. The evidence shows (D-6) that the electric bill continued to be listed in -----'s name as of January 2011.
- 14) In certain instances, the Department's policy requires that after application approval and during the certification period SNAP households report when their total household income exceeds a certain amount. There is no evidence that this Defendant was notified of any such requirement on her part. The Department did not provide as evidence any notification letters or other evidence to support that the Defendant fit this criteria, and that she was notified of any responsibility to report when her income exceeded a certain amount.
- 15) 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.
- 16) 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.

- 17) 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.
- 18) 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.
- 19) 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 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 June 2, 2010 online SNAP application form which clearly informed her of these responsibilities.
- 4) The evidence is insufficient to show clearly and convincingly that ----lived in the Defendant's household at the time of the June 2, 2010 SNAP application. Although the evidence supports that he began living with the Defendant at some point during the year 2010, there is simply not enough evidence to support that he was living with the Defendant on June 2, 2010. There is also no conclusive evidence he was employed at that time. Although the evidence shows that ---was employed with [REDACTED] during the first and second quarters of 2010, monthly earnings are not provided and it is conceivable that ----'s employment with this company ended before June 1, 2010. The evidence shows he began working with [REDACTED] also known as [REDACTED] LLC, on July 1, 2010.
- 5) Additionally, there is no evidence to support that the Defendant was required by policy to report during the certification period when her total household income exceeded a certain amount, and there is no evidence that she was notified of any such requirement. As a result, she cannot be found to have committed an intentional program violation for any such failure to report after application and during the certification period.
- 6) Additionally, although the evidence supports that ----was living in the Defendant's home and employed at the time of the Department's December 23, 2010 SNAP redetermination interview with her, the evidence is not clear as to what she reported on that date. Signed copies of the SNAP review application and Rights and Responsibilities form were not submitted as evidence, and the Department's case comments listed in its computer system for that date only provide that the home consists of two (2) adults and three (3) children. These comments are not thorough and do not speak to what was reported by the Defendant on that date in regard to household composition and income, and there is no other evidence to show what the Defendant reported or did not report on that date.
- 7) The Department was not 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 **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of July, 2011.

**Cheryl Henson
State Hearing Officer**