



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

August 19, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your Supplemental Nutrition Assistance Program Administrative Disqualification Hearing held August 9, 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).

Information submitted at the hearing reveals that you intentionally provided false information about your household composition and income, at your SNAP application and recertification, to receive SNAP benefits in which you were not legally entitled.

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 October 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-1263

**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 August 9, 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 Investigation

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 one year 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 Combined Application and Review Form with associated Rights and Responsibilities dated August 3, 2009
- D-2 Computer printout of Case Comments dated September 17, 2009
- D-3 Combined Application and Review Form with associated Rights and Responsibilities dated December 17, 2009
- D-4 Computer printout of Unemployment Compensation Income Benefit Payment History
- D-5 Division of Motor Vehicles Driver History Inquiry for -----
- D-6 Employment Data for ----- Inc. dated September 14, 2010
- D-7 Enrollment History for ----- County Schools dated September 17, 2010
- D-8 Food Stamp Claim Determination worksheet
- D-9 Notification of Intent to Disqualify dated April 29, 2011
- D-10 West Virginia Income Maintenance Manual 1.2, 1.4, 2.2, 9.1
- D-11 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 twelve (12) month period.
- 2) On June 9, 2011, a Notice of Scheduled Hearing was issued to the Defendant, via certified restricted mail delivery, scheduling the matter to be heard on July 18, 2011. The State Hearing Officer received notification that the Defendant received such notice on June 21, 2011. The Defendant phoned the State Hearing Officer and requested a continuance on the matter. At that time the Defendant was verbally informed of the rescheduled date of August 9, 2011 and a Notice of Scheduled Hearing was issued to the Defendant on June 28, 2011, via certified restricted mail delivery. The United States Postal Service returned the June 28, 2011 Notice of Scheduled Hearing as unclaimed on July 21, 2011. On July 21, 2011, an additional Rescheduling Notice was issued to the Defendant, via first class mail delivery, which was not returned to the State Hearing Officer as undeliverable.
- 3) The hearing convened as scheduled at 11:30 A.M., on the requested date, as of 11:45 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) On April 29, 2011, the Department issued the Defendant Exhibit D-5, 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 -----intentionally violated the food stamp program by not reporting -----in the household on 8/3/09 app [sic], her UCI on 12/15/09 app [sic], & falsely claiming daughter -----in her HH [sic] when, in fact, she was living with her dad.

- 5) The Department contends that the Defendant provided false statements and withheld information concerning her income and household composition at her SNAP application and a subsequent recertification for SNAP benefits.
- 6) Ms. Lori Woodward, Repayment Investigator testified that the Defendant applied for SNAP benefits on August 3, 2009 and completed Exhibit D-1, Combined Application and Review Form with associated Rights and Responsibilities. Ms. Woodward testified that the Defendant reported herself and her children, -----and -----, as the only members of the household. Based on the information related during the application, benefits were approved August 3, 2009. It shall be noted that the Defendant was known as -----, at the time of the SNAP application. Ms. Woodward testified that the Defendant contacted the Department on September 17, 2009, and reported her fiancé, -----had moved in the household effective September 1, 2009. Exhibit D-2, Computer printout of Case Comments dated September 17, 2009 documents in pertinent part:

Phone call from ----- [sic] ----- that she got a letter from Quality Assurance and she asked what that meant. Worker attempted to explain the process. The client then said that she moved her fiancée [sic] in with her 9/1/09. She stated that he is working a [sic] [REDACTED] and paid biweekly/worker pended for proof of gross earned income for -----and [sic] into the office by 9/27/09.

Ms. Woodward purported that the Department became aware that -----had resided at the Defendant's address of [REDACTED] West Virginia [REDACTED] as documented in Exhibit D-1, since April 9, 2009. Ms. Woodward provided Exhibit D-5, Division of Motor Vehicles Driver History Inquiry, to demonstrate that ----- was issued a West Virginia driver's license on April 9, 2009, which lists a residence of [REDACTED] [REDACTED] West Virginia [REDACTED] the same address as the Defendant. Ms. Woodward provided Exhibit D-6, Employment Data for -----for [REDACTED] Inc. to demonstrate that ----- listed his home address of [REDACTED] West Virginia for his employment dates of October 30, 2008 through July 31, 2010.

- 7) On December 17, 2009, the Defendant completed a recertification for SNAP and completed Exhibit D-3, Combined Application and Review Form with associated Rights and Responsibilities. At the recertification, the Defendant reported that her household consisted of herself, her cohabiter, and her two children. Additionally, the Defendant reported that her

cohabitater's income was the only income available to the household. Ms. Woodward testified that the Department became aware that the Defendant had been receiving unemployment compensation income prior to the completion of her recertification for SNAP benefits. Ms. Woodward provided Exhibit D-4, Unemployment Compensation Income Benefit Payment History to demonstrate that the Defendant received \$293.00 in weekly unemployment compensation income for a period of September 7, 2009 through October 22, 2009 and November 16, 2009 through September 6, 2010.

- 8) Ms. Woodward testified that the Department became aware that the Defendant's daughter, -----, who the Defendant listed as a resident of her household, had been residing with her father, -----, and was enrolled at [REDACTED] Intermediate School in [REDACTED] County, West Virginia since school year 2007 (kindergarten year). Ms. Woodward provided Exhibit D-7, to demonstrate that the child resided with her father and utilized transportation of both the morning and evening school buses within [REDACTED] County.
- 9) The Defendant completed and signed the Rights and Responsibilities section of the application and recertification for SNAP benefits (Exhibit D-1 and D-3). The Defendant specifically acknowledged the following on the documentation:

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.

- 10) Ms. Woodward presented Exhibit D-8, Food Stamp Claim Determination worksheet to demonstrate that by providing false information concerning her household composition and income, an overpayment of SNAP benefits was issued to the Defendant in the amount of \$3536.00 for the period of August 3, 2009 through May 2010.
- 11) 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.
- 12) West Virginia Income Maintenance Manual, Chapter 9.1 indicates:

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

 - 1st Offense: 1 Year
 - 2nd Offense: 2 Years
 - 3rd Offense: Permanent
- 13) 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.

14) 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) Evidence reveals that the Defendant failed to report her cohabiter as a member of her household at her SNAP application and falsely reported her daughter as a member of the household, when in fact, she was residing with her father and enrolled in ██████████ County Schools. Additionally, the evidence reveals that the Defendant failed to report the onset of unemployment compensation income at a subsequent SNAP recertification. The result of such

willful misrepresentation at her SNAP application and recertification for 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 October 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 twelve (12) month 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 August, 2011.

Eric L. Phillips
State Hearing Officer