



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241**

**Earl Ray Tomblin  
Governor**

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

September 28, 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 September 22, 2011 to determine whether 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.

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 Food Stamp Act, 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 Section 20.2 and Code of Federal Regulations-7 CFR Section 273.16)

Information submitted at the hearing fails to demonstrate that you intentionally withheld information about your household composition, resulting in an incorrect determination of your SNAP allotment.

It is the decision of the State Hearing Officer that you did not commit an Intentional Program Violation and a disqualification penalty will not be applied.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Rebecca Pancake, Repayment Investigator, DHHR

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

**IN RE:** -----,

**Defendant,**

**v.**

**ACTION NO.: 11-BOR-1666**

**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 conducted via videoconference on September 22, 2011 in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources (WVDHHR).

All persons giving testimony were placed under oath.

**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 an EBT card to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

**III. PARTICIPANTS:**

-----, Defendant

Rebecca Pancake, State Repayment Investigator, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, 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 from participation in the Supplemental Nutrition Assistance Program for a period of one (1) year.

**V. APPLICABLE POLICY:**

7 CFR Section 273.16 USDA Code of Federal Regulations  
WVDHHR Common Chapters Manual Section 740.11.D and 740.22.M  
West Virginia Income Maintenance Manual Sections 1.2.E, 9.1.A.1, and 20.2

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

**Department's Exhibits:**

- D-1 Combined Application and Review form signed by Defendant on September 27, 2010
- D-2 Rights and Responsibilities signed by Defendant on September 27, 2010
- D-3 Attendance verification from [REDACTED] Elementary School for ----
- D-4 Attendance verification from [REDACTED] Elementary School for ----
- D-5 Notes from State Repayment Investigator's March 24, 2011 conversation with -----
- D-6 Claimant Profile Data and Benefit Payment History for ----
- D-7 Computer printout from FNS: Electronic Disqualification Recipient System
- D-8 Food Stamp Claim Determination form, Food Stamp Claim Calculation Sheet and Food Stamp Allotment Determination information
- D-9 Notifications of Intent to Disqualify with Waivers of Administrative Disqualification Hearing
- D-10 West Virginia Income Maintenance Manual Sections 1.2.E, 20.2 and 20.6
- D-11 7 CFR Section 273.16 USDA Code of Federal Regulations

**VII. FINDINGS OF FACT:**

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator Rebecca Pancake on August 9, 2011. The Repayment Investigator 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), formerly Food Stamp Program, for a period of one (1) year.

- 2) The Repayment Investigator testified that the Defendant completed a SNAP redetermination on September 27, 2010, signing a Combined Application and Review Form (D-1) with associated Rights and Responsibilities (D-2). The Defendant's signature is located on Page 11 of the application and on Page 9 of the Rights and Responsibilities, attesting that she had provided complete and truthful information to the Department.

The Repayment Investigator contended the Defendant failed to report that her sons, ----- and -----, were no longer residing in her home in ██████████ County. The Investigator indicated that the children were included in the Defendant's SNAP Assistance Group, however the boys were actually residing with their father, -----, in ██████████ County. The Investigator provided Exhibits D-3 and D-4, Attendance Verifications from ██████████ Elementary School, which indicate that the children reside with their father and grandmother at ██████████ ██████████ WV, and are transported to and from school via bus. The Repayment Investigator provided notes from her March 24, 2011 telephone conversation with the children's father, who reportedly stated that the children had been with him since the beginning of the 2010 academic year, and that there was no custody agreement between the parents.

- 3) The Repayment Investigator contended that the Defendant's failure to report the children's absence resulted in a \$1,956 SNAP over issuance for the period of October 2010 through March 2011.
- 4) The Defendant testified that she shares custody with the children's father and that the children stayed with each parent for a portion of the week. She indicated that she had the children on no specific days of the week, as their whereabouts depended on scheduling issues. The Defendant stated that she would pick her sons up at the bus stop after school and sometimes would meet their grandmother half-way to transport them back to ██████████ County.
- 5) West Virginia Income Maintenance Manual Section 1.2.E (D-10) states that the client's responsibility is to provide information about his/her circumstances so the worker is able to make a correct decision about his/her eligibility.
- 6) West Virginia Income Maintenance Manual Section 9.1.A.1 provides the following information concerning shared custody arrangements and SNAP eligibility:

- Children Under Age 22, Living With a Parent

Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent. In the instance of shared custody, when the child is legally considered to reside with each parent equal amounts of time (50/50),

the parents must decide where the child “lives”. [*sic*] If no one is receiving any benefits from the Department for the child, it is assumed that the living arrangements are not questionable and the child is added to the AG that wishes to add him. If the child is already listed in another AG or the other parent wishes to add the child to his AG, the parents must agree as to where the child “lives” and, ultimately, to which AG he is added. Where the child receives the majority of his meals is not relevant.

7) West Virginia Income Maintenance Manual Section 20.2:

When an AG (Assistance Group) has been issued more SNAP benefits 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.

8) West Virginia Income Maintenance Manual Section 20.2.C.2 (D-10):

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

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: (Section 9.1A, 2, h) 1st Offense: 1 year (Disqualification).

9) WVDHHR Common Chapters Manual Section 740.11.D provides that an 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 relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.

10) WVDHHR Common Chapters Manual Section 740.22.M states:

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, 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) Policy states that when an Assistance Group has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. An Intentional Program Violation includes making false or misleading statements, misrepresentations, concealing or withholding information, or committing any act that violates SNAP regulations. If it is determined that an Intentional Program Violation has been committed, an appropriate disqualification penalty is imposed. 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.
- 2) Information presented during the hearing fails to demonstrate that the Defendant intentionally provided false or misleading information to the Department in regard to her children's living situation. The Defendant testified that she shared custody with the children's father under no court-ordered custody arrangement. While the children were enrolled in school in ██████ County, the Defendant - who resides in neighboring ██████ County - indicated that she picked them up after school and they were with her on certain days of the week, depending on schedules.
- 3) As there is no clear and convincing evidence to demonstrate that an IPV occurred, the Department's proposal to disqualify the Defendant from the SNAP cannot be affirmed.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to impose an Intentional Program Violation penalty.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 28th Day of September, 2011.**

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**Pamela L. Hinzman  
State Hearing Officer**