



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

October 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 October 27, 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, 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 shows 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 **uphold** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against you based on an Intentional Program Violation. Your penalty will begin December 1, 2011.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Jennifer Butcher, Kanawha DHHR

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 11-BOR-1881

**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 October 27, 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:

Jennifer Butcher, 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 October 10, 2011,
- D-2 West Virginia Income Maintenance Manual §1.2.E, two (2) pages
- D-3 Code of Federal Regulations §7 CFR273.16
- D-4 Application form dated September 24, 2010 with Rights and Responsibilities form
- D-5 Case Comments from Department's computer system dated September 24, 2010
- D-6 Case Comments from Department's computer system dated March 16, 2011 and Employee Wage Data screen dated October 10, 2011
- D-7 West Virginia Income Maintenance Manual §2.2
- D-8 Income Verification from [REDACTED]
- D-9 West Virginia Income Maintenance Manual §2.2
- D-10 [SNAP] Claim Determination forms and supporting documentation
- D-11 West Virginia Income Maintenance Manual §20.6.A
- D-12 Notification letters to Defendant dated July 13, 2011 and August 22, 2011, Computer documentation of number of disqualifications against Defendant
- D-13 West Virginia Income Maintenance Manual §20.2.C.2
- D-14 West Virginia Income Maintenance Manual §20.2
- D-15 West Virginia Income Maintenance Manual §20.2.F.2

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 September 12, 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 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 October 27, 2011 hearing was mailed to the Defendant on or about September 15, 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 9:26 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 July 13, 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 her earnings from Braley Care Homes from April 9, 2010 to February 11, 2011.
- 5) The Department presented evidence to show that the Defendant completed an application for SNAP (D-4, D-5) on September 24, 2010, at which time she reported that there was no income in her household. She 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. She also signed the Rights and Responsibilities form which further certified her understanding of her responsibilities.
- 6) The Department also presented evidence (D-6) to show that the Defendant applied for Emergency LIEAP [Low Income Energy Assistance Program] on March 16, 2011, at which time she again did not report that she was working. The Department recorded the following pertinent information in its computer system case comments section:

...----- has a case as an absent parent for 2 older children. She has been making payments each month. Per info [information] in OSCAR [Department's child support computer system], she started working at [REDACTED] 02-14-11 and they are collecting child support thru a wage withholding [last payment 03-08-11]. Client denies working there or [REDACTED] [REDACTED] and others in 2009 and 2010
– all unreported!!

Attached to Department's Exhibit D-6 is a copy of a printout from the Department's computer system dated October 10, 2011, which shows a computer cross match for wage data. This

printout shows earnings for the Defendant from [REDACTED] Memorial Hospital, [REDACTED] Services, and [REDACTED] Services during 2009 and through the second quarter of 2011.

- 7) The Department subsequently verified and presented as evidence earnings verification from [REDACTED] which shows that the Defendant worked for [REDACTED] Inc., from April 9, 2010 through February 11, 2011. The verification provides her gross wages broken down into individual pay dates, and shows she received regular pay from the company from April 9, 2010 through February 11, 2011.
- 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, specifies 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) 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 clearly aware of her responsibility to report truthful and accurate information and the penalties involved for failing to do so. She read and signed the September 24, 2010 SNAP application form, as well as the Rights and Responsibilities form, which clearly informed her of these responsibilities.
- 4) The evidence is sufficient to show clearly and convincingly that the Defendant intentionally withheld information from the Department about her employment earnings during her September 24, 2010 application interview. The Defendant was employed and receiving earnings from employment during September 2010 when she reported that she had no income. The evidence shows that during September 2010 the Defendant earned a total of six hundred ninety five dollars (\$695.00).
- 5) 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 Defendant's penalty period will begin December 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of October, 2011.

**Cheryl Henson
State Hearing Officer**