



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

June 3, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the SNAP Administrative Disqualification Hearing held May 26, 2011, for the purpose of determining whether an Intentional Program Violation (IPV) was committed by you.

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, formerly known as the Food Stamp Program, 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 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 coupons. 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, Chapter 20.2; Code of Federal Regulations 7 CFR §273.16)

Information submitted at the hearing reveals that you intentionally concealed facts about your household in order to receive SNAP benefits for which you were not entitled.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. Your disqualification from SNAP will begin effective July 1, 2011.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Marshall Daniels, Repayment Investigator

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

-----,

Defendant,

v.

Action Number: 11-BOR-664

**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 concluded on June 3, 2011, 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 May 26, 2011.

II. PROGRAM PURPOSE:

The purpose of SNAP, formerly known as the Food Stamp Program, 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 EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

Marshall Daniels, Department representative
Mary Powell, Department witness
-----, Defendant

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in SNAP.

V. APPLICABLE POLICY:

Code of Federal Regulations, 7 CFR §273.16
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 Benefit Recovery Referral screen print
- D-2 Case Comments screen print, entries from October 5, 2010 through October 6, 2010
- D-3 Case Comments screen print, entries from November 12, 2009
- D-4 Drug felony documentation
- D-5 Food Stamp Claim Determination form
- D-6 Combined Application and Review Form, dated November 12, 2009; Rights and Responsibilities form, dated November 12, 2009
- D-7 West Virginia Income Maintenance Manual, Chapter 20.2
- D-8 West Virginia Income Maintenance Manual, Chapter 9.1

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of Intentional Program Violation, or IPV, in the Defendant's case, due to concealing facts regarding her drug felony, affecting the Defendant's eligibility for SNAP, formerly known as the Food Stamp Program.
- 2) The Code of Federal Regulations, 7 CFR §273.16(c), defines an IPV as:
 - (c) Definition of intentional Program violation. 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, 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).

- 3) The Department presented an application and rights and responsibilities form (Exhibit D-6) from a November 12, 2009 SNAP application interview. These forms were signed by the Defendant. The application notes a “No” response to the question, “Has anyone in your household been convicted of a drug felony for possession, use or distribution of a controlled substance committed on or after 08/23/96?”
- 4) Policy from the West Virginia Income Maintenance Manual, Chapter 9.1.A.2.g, provides a table of individuals excluded by law from any SNAP assistance group, and lists a permanent duration of exclusion from SNAP eligibility for individuals convicted of a felony offense which occurred on or after August 23, 1996, which involved possession, use or distribution of a controlled substance as defined by section 802 (6) of the Controlled Substance Act. The Defendant presented no dispute that she met this exclusion criteria, only that she had not withheld this information in the November 12, 2009 SNAP application interview.
- 5) Mary Powell, Economic Service Worker for the Department, testified that she conducted the SNAP application interview with the Defendant on November 12, 2009. She testified that she made the comment entries listed on the Case Comments screen print (Exhibit D-3) on that date. These comments state, in pertinent part:

----- CAME IN OFFICE TODAY TO APPLY FOR FS. HER CHILDREN LIVE WITH THEIR FATHER IN [REDACTED] WV. ----- LIVES WITH HER GRANDPARENTS IN [REDACTED] WV. SHE JUST GOT OUT OF JAIL FOR BURGLARY A FELONY BUT NO DRUG FELONY.

- 6) The Defendant testified that she did not believe she withheld anything regarding her drug felony conviction at application. She testified that she was on parole at the time, and did not want to “get in any more trouble.” She testified that she only saw the signature page of the application document (Exhibit D-6) that she signed. She testified that she was not asked the question regarding a drug felony in the application interview. Ms. Powell testified that she did not remember the Defendant “in person,” but that she did give the Defendant only the signature page of the application document, not the entire document to review before signing.
- 7) The signature page in question (Exhibit D-6) states, in pertinent part (emphasis added):

I understand my responsibility to provide complete and truthful information. **I have reviewed or had read to me the information contained in this automated portion of the application form** and I understand the information. I understand 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 I am not by law entitled. **Under penalty of perjury, I certify that the statements are true and correct.**

- 8) The Department presented documentation (Exhibit D-5) showing the calculation of the SNAP over issuance claim resulting from the incorrect determination of household size. A claim was determined between November 2009 and October 2010 totaling \$2194.00. The Department additionally confirmed that the Defendant has no prior IPV offenses, and that the proposed IPV would be a first offense.

- 9) The West Virginia Income Maintenance Manual, Chapter 9.1.A.2.h, states:
 - h. 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 Department clearly established that the Defendant withheld information regarding her drug felony, directly affecting her eligibility for SNAP benefits. Although the Department worker was clearly in error by failing to present the entire application document to the Defendant for review, the Defendant signed anyway, affirming the document as true and complete, sight unseen. Comments made by the Department worker at the time of application clearly established that the worker did ask the Defendant the question regarding a drug felony conviction, and the false response to this question is part of what the Defendant affirmed as true by signing a document she failed to review or have read to her. The Department additionally showed that the error resulting from this incorrect information from the Defendant resulted in a SNAP over issuance claim totaling \$2194.00.

- 2) The Department also clearly established the intent of the Defendant to provide misleading information to receive SNAP benefits for which she would not have otherwise been entitled. Comments made by the Department worker at the time of the application noted a statement from the Defendant that she had been in jail for burglary, omitting mention of the drug felony conviction that prevented SNAP benefit eligibility. It is reasonable to infer that if the Defendant mentioned one felony conviction but did not mention another – the one affecting SNAP eligibility – that the concealment was intentional. The Department was correct in its determination that an IPV was committed by the Defendant.

IX. DECISION:

Intentionally withholding, concealing, or providing misleading facts to secure SNAP benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Agency's proposal to apply a SNAP disqualification is **upheld**. The Defendant will be disqualified from participation in SNAP for a period of twelve (12) months to begin effective July 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of June, 2011.

Todd Thornton
State Hearing Officer