



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

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 your hearing held April 26, 2011 for the purpose of determining whether or not an Intentional Program Violation occurred.

In arriving at a decision, the State Hearings 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 (SNAP) 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 (WV Income Maintenance Manual § 20.2 C(2) and 7 CFR Section 273.16 (c)].

The information submitted at your hearing revealed that you committed an Intentional Program Violation by withholding your status as a drug felon at your June 2009 SNAP application.

It is the decision of the State Hearings Officer that you committed an Intentional Program Violation. You will continue to serve your permanent disqualification from participation in SNAP.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Tammy Hollandsworth, Repayment Investigator

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 11-BOR-783

**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 concluded on April 26, 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.

II. PROGRAM PURPOSE:

The program entitled Supplemental Nutrition Assistance Program (SNAP) is administered by the West Virginia Department of Health and Human Resources.

The purpose of 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 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:

Tammy Hollandsworth, Repayment Investigator

Presiding at the Hearing was Kristi Logan, 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 Defendant committed an Intentional Program Violation.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 1.2 E and 9.1 A

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 SNAP Claim Determination
- D-3 SNAP Issuance History Screen (IQFS) from RAPIDS Computer System
- D-4 SNAP Allotment Determination Screen (EFAD) from RAPIDS Computer System
- D-5 Case Members History Screen (AQCM) from RAPIDS Computer System
- D-6 Case Comments (CMCC) from RAPIDS Computer System
- D-7 Division of Corrections Offender Public Information Page and State of [REDACTED] Clerk Superior Court Printout
- D-8 WV Income Maintenance Manual § 9.1 A(2)g
- D-9 Combined Application and Review Form and Rights and Responsibilities Form dated June 18, 2009
- D-10 Notification of Intent to Disqualify dated February 9, 2011
- D-11 WV Income Maintenance Manual § 1.2 E
- D-12 WV Income Maintenance Manual § 20.1 and 20.2
- D-13 WV Income Maintenance Manual § 20.6
- D-14 Code of Federal Regulations – 7 CFR §273.16

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from Department of Health and Human Resources' Repayment Investigator, Tammy Hollandsworth on March 25, 2011. The Department contends that Defendant has committed an Intentional Program Violation (IPV) and is recommending that she be disqualified from participation in SNAP for 12 months.
- 2) Defendant was notified of the hearing by letter sent by this Hearing Officer on March 25, 2011. Defendant signed for the certified letter on March 28, 2011. Defendant failed to appear at the hearing or provide good cause for her failure to do so. In accordance with 7 CFR §273.16(e)(4) and Common Chapters Manual §740.20, the hearing was held in Defendant's absence.
- 3) Defendant applied for SNAP on June 18, 2009. SNAP benefits were approved with a recertification due in May 2011 (D-6).

The Department received verification from the [REDACTED] General Court of Justice that Defendant had been convicted of a felony for possession of a schedule II controlled substance on July 11, 2006 (D-7).

4) The Department contends Defendant falsely reported that she was not a convicted drug felon at her June 2009 SNAP application. Defendant signed the Combined Application and Review Form dated June 18, 2009 indicating that she was not a convicted drug felon. Additionally, Defendant signed the Rights and Responsibilities form on June 18, 2009 stating she understood if she were a convicted drug felon that she would be permanently disqualified from participation in SNAP (D-9). The result of the misrepresentation was an overpayment of SNAP of \$1802 issued for which Defendant was not entitled to receive (D-2).

5) WV Income Maintenance Manual § 1.2 E states:

The client's responsibility is to provide information about his circumstances so the Worker is able to make a correct decision about his eligibility. When the client is not able to provide the required verification, the Worker must assist him. The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions:

- Denial of application
- Closure of the active Assistance Group (AG)
- Removal of the individual from the AG
- Repayment of benefits
- Reduction in benefits

6) WV Income Maintenance Manual § 9.1 A(2)g states:

Persons who are excluded by law as found below are ineligible and may not be a separate AG. The periods of ineligibility are as follows:

Reason for Exclusion: Convicted of a felony offense which occurred on or after 8/23/96 which involved possession, use or distribution of a controlled substance as defined by section 806 (6) of the Controlled Substance Act.

Length of Exclusion: Permanent

VIII. CONCLUSIONS OF LAW:

- 1) In order for an Intentional Program Violation to be established, it must be shown by clear and convincing evidence that the Defendant intentionally made a false or misleading statement or withheld or concealed facts from the Department.
- 2) Defendant signed the Combined Application and Review Form and Rights and Responsibilities form attesting that she was not a convicted drug felon at her June 2009 SNAP application. Defendant had in fact been convicted of a felony possession of a controlled substance in July 2006. The result of Defendant withholding her status as a drug felon resulted in the approval of SNAP benefits for which she was not entitled to receive.

IX. DECISION:

It is the decision of the State Hearing Officer that Defendant committed an Intentional Program Violation. However, in light of Defendant's permanent disqualification as a convicted drug felon, no disqualification period is ordered.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd day of June 2011.

**Kristi Logan
State Hearing Officer**