



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

July 13, 2023



RE: [REDACTED] v. WV DHHR
ACTION NO.: 23-BOR-1469

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Sarah Ellis, Department Representative

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

██████████,

Defendant,

v.

Action Number: 23-BOR-1469

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Movant.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from an Administrative Disqualification Hearing for ██████████ requested by the Movant on April 4, 2023. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual and Federal Regulations at 7 CFR §273.16. The hearing was convened on May 16, 2023, and, upon continuance granted to the Defendant, reconvened on June 29, 2023.

The matter before the Hearing Officer arises from a request by the Movant for a determination as to whether the Defendant has committed an Intentional Program Violation and should be disqualified from the Supplemental Nutrition Assistance Program (SNAP) for twelve (12) months.

At the hearing, the Movant appeared by Sarah Ellis, Repayment Investigator. The Defendant was self-represented. Appearing as a witness for the Defendant was ██████████. All witnesses were placed under oath, and the following documents were admitted into evidence.

Movant's Exhibits:

- D-1 Code of Federal Regulations
7 CFR 273.16 (excerpt)
- D-2 SNAP claim determination packet
Food Stamp (SNAP) Claim Determination form
Screen print of the Defendant's SNAP allotment determination
- D-3 Petition to Institute Child Abuse and Neglect Proceedings, in the Circuit Court of ██████████
██████████, West Virginia, entered October 27, 2022; Initial Order Upon Filing of Petition to
Institute Child Abuse and Neglect Proceedings, entered October 27, 2022
- D-4 Screen print of Client Contact Report regarding the Defendant's case
Entries dated November 9, 2022, through December 25, 2022
- D-5 SNAP review documents, signed October 31, 2022
- D-6 West Virginia Income Maintenance Manual, Chapter 1 (excerpt)

- D-7 West Virginia Income Maintenance Manual, Chapter 11 (excerpt)
- D-8 West Virginia Income Maintenance Manual, Chapter 11 (excerpt)
- D-9 ADH documents
Advance Notice of Administrative Disqualification Hearing Waiver
Waiver of Administrative Disqualification Hearing

Defendant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Movant alleged that the Defendant committed an Intentional Program Violation (IPV) by falsely reporting her household composition and requested that a twelve (12) month penalty be imposed against her.
- 2) The Defendant was a recipient of SNAP benefits.
- 3) The Defendant gave birth to her son, Child C, on October 24, 2022.
- 4) The Movant, through its Child Protective Services (CPS) unit, filed proceedings in the Circuit Court of [REDACTED], West Virginia, to remove Child C from the Defendant's custody on October 27, 2022. (Exhibit D-3)
- 5) The Circuit Court of [REDACTED], West Virginia, ordered the immediate removal of Child C from the Defendant's custody, on October 27, 2022. (Exhibit D-3)
- 6) The Circuit Court of [REDACTED], West Virginia, additionally ordered on October 27, 2022, that Child C "...be placed in the custody of WVDHHR pending further proceedings in this matter..." (Exhibit D-3)
- 7) Child C was in [REDACTED] for approximately a week after his birth.
- 8) After approximately one week from his birth, Child C was transferred from [REDACTED].
- 9) At the time Child C was being treated at [REDACTED], the Defendant was served papers advising her of the court action to remove Child C from her legal custody.

- 10) The Defendant reported Child C in her household on SNAP review documents (Exhibit D-5) signed October 31, 2022.
- 11) The Defendant has no prior IPV's (Exhibit D-9).

APPLICABLE POLICY

Code of Federal Regulations 7 CFR §273.16 states that an individual making a false or misleading statement, or misrepresenting, concealing or withholding facts, violating the Food Stamp Program (SNAP), or any State statute for the purpose of acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system has committed an Intentional Program Violation (IPV).

West Virginia Income Maintenance Manual §11.2.3.B states that IPV's include making false or misleading statements, misrepresenting facts, 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. The client(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.

West Virginia Income Maintenance Manual §11.6.1 provides, regarding the statutory welfare fraud definition, in pertinent part (emphasis added):

..

The important elements constituting an offense under this statute are that any false representation was willfully made or that any other device to obtain assistance was a misrepresentation.

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and **with the knowledge that it is false. It is an essential element in a misrepresentation charge that the client knew his statement was false.**

..

Code of Federal Regulations, 7 CFR §273.16(b), describes the Disqualification penalties:

(1) Individuals found to have committed an Intentional Program Violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first Intentional Program Violation, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section;

(ii) For a period of twenty-four months upon the second occasion of any Intentional Program Violation, except as provided in paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section; and

(iii) Permanently for the third occasion of any Intentional Program Violation.

West Virginia Income Maintenance Manual §1.2.4 states that it is the client's responsibility to provide information about his/her circumstances, so the Worker is able to make a correct decision about his/her eligibility.

DISCUSSION

Federal regulations define an Intentional Program Violation as making a false statement related to the acquisition of SNAP benefits. An individual who is found to have committed an Intentional Program Violation is disqualified from participation in SNAP. The Movant must show, by clear and convincing evidence, that the Defendant committed an Intentional Program Violation.

The Defendant was receiving SNAP benefits for a one-person assistance group (AG). The Defendant was pregnant, and gave birth to her son, Child C, on October 24, 2022. The Movant's CPS unit petitioned the court to remove Child C from the Defendant's custody on October 27, 2022, and the court placed the "...legal and physical care, custody and control of the infant child," Child C, with the Movant on the same date. (Exhibit D-3) The Defendant completed a SNAP review form on October 31, 2022, reporting herself and Child C in her household, and omitting the father of Child C from the review form. Although the Movant's request for an IPV is based on household composition, the Movant's only claim of a false statement is related to Child C.

Policy specifies that an essential element of a misrepresentation charge is the knowledge that the statement made is false. Evidence and testimony clearly showed the removal occurred on October 27, 2022, and that the Defendant reported Child C in her household on October 31, 2022. However, for this to be a false statement, the Defendant must have *known* it to be false on October 31, 2022. The Movant did not meet its burden of showing that the Defendant was making a statement she knew to be false on October 31, 2022.

Upon birth, Child C was in [REDACTED], for approximately a week. After that time, Child C was transferred to [REDACTED]. In instances of CPS removal where the child or children are physically residing in the home with the parent, the date of removal and the date the parent *knew* of removal are ordinarily the same. However, because Child C was hospitalized, the change in legal custody did not correspond with a change in physical custody. The Movant did not provide CPS case recordings (Exhibit D-4) before November 9, 2022, and the only reliable information regarding the date the Defendant knew of a legal custody change was the Defendant's testimony.

When asked when she discovered the legal custody of Child C had changed, the Defendant offered two answers. The Defendant testified that a CPS worker told her, at [REDACTED], that a court order would be forthcoming. This conversation occurred on the 'sixth night' after Child C's birth, which would be October 29 or October 30, 2022. It is unknown if this conversation fully informed the Defendant of the custody change or if the CPS worker was simply informing the Defendant that she would receive a court order. The second answer offered by the Defendant is that she was served papers at her home that she had to sign, at the time Child C was in [REDACTED]

██████████. Because the transfer of Child C from ██████████ was approximately a week after his birth, the Defendant would have been unaware of the legal custody change when she incorrectly reported Child C on her SNAP review form. The Defendant's second answer to this question is more convincing because the CPS worker may or may not have fully informed her of what had transpired (e.g., he may have only told the Defendant that a court order would be forthcoming) and the actual delivery of the court order would likely have occurred by process server as described by the Defendant.

The Movant has not met its burden of showing clear and convincing evidence of an IPV by the Defendant. An IPV by the Defendant would require a false statement, and a false statement requires the Defendant to know the statement is false. The Movant may have had additional information in earlier CPS case recording entries, or other documentation to pin down a date that the Defendant knew of the legal custody change of Child C, but based on the reliable information and testimony presented at the hearing the Movant's proposal to impose a first offense IPV cannot be affirmed.

This decision only addresses the Movant's IPV proposal regarding a household composition error regarding Child C and does not preclude the Movant from actions regarding the reported presence of Child C's father around the same time period.

CONCLUSIONS OF LAW

- 1) Because the Movant failed to show, by clear and convincing evidence, that the Defendant knew of a change in the legal custody of her hospitalized infant, Child C, when she reported Child C in her household, the Defendant's statement was not a willfully false statement.
- 2) Because the Defendant did not make a willfully false statement, the Defendant did not commit an IPV.
- 3) Because the actions of the Defendant were not shown to be an IPV, the Movant's proposal to impose a first offense, 12-month disqualification from participation in SNAP cannot be affirmed.

DECISION

It is the finding of the State Hearing Officer that the Defendant did not commit an Intentional Program Violation of SNAP regulations.

ENTERED this ____ day of July 2023.

Todd Thornton
State Hearing Officer