



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

May 20, 2010

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 May 20, 2010 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 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 §20.2 and Code of Federal Regulations - 7 CFR §273.16).

The information submitted at the hearing showed that you intentionally provided false information about your household's composition in order to receive SNAP for which you were not entitled.

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 begins July 1, 2010.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review/Natasha Jemerison, Kanawha DHHR

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

-----,

Defendant

v.

Action Number: 10-BOR-1147

**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 May 20, 2010.

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:

-----, Defendant

Natasha Jemerison, State Repayment Investigator

-----, Department's witness

-----, Department's witness

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 RAPIDS computer system dated May 18, 2010
- D-2 WV Income Maintenance Manual §1.2.E
- D-3 Food Stamp Claim Determination forms and supporting documents
- D-4 Code of Federal Regulations 7 CFR 273.16
- D-5 Various application forms and Rights and Responsibilities forms signed by Defendant
- D-6 Various case comments from RAPIDS computer system
- D-7 Court Orders from 2005 and 2006, school enrollment information, case comments from OSCAR computer system and WV State Online Query screen
- D-8 WV Income Maintenance Manual Section 2.2
- D-9 WV Income Maintenance Manual Section 20.6
- D-10 Notification of Intent to Disqualify forms dated November 17, 2009
- D-11 Case comments from RAPIDS computer system dated April 2008

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing (ADH) was received by the Board of Review from the West Virginia Department of Health and Human Resources (Department) on April 6, 2010. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and made a fraudulent statement or misrepresentation regarding her household composition in order to receive SNAP (formerly known as the Food Stamp Program), and is recommending that the Defendant be disqualified from participation in SNAP for a period of one (1) year.
- 2) On or about November 17, 2009 the Department sent a Waiver of Administrative Disqualification Hearing (D-10) form to the Defendant, indicating that it believed she received

SNAP by means of an intentional violation of a program rule. The letter alleges that the Defendant intentionally violated SNAP rules by “getting benefits for ----- when she did not have custody.”

- 3) The Department’s evidence (D-7) shows that two court orders were completed in 2005 and 2006 which provide that ----- is to reside with his father and a schedule was to be developed between the parties for visitation. The parties agreed that the schedule was followed for the first couple years, and the child visited the Defendant more frequently. During this timeframe, the Defendant spoke with a Department employee who tallied up the days the child was in her home, which totaled at least one hundred ninety one (191) by the Defendant’s recollection, and added the child to the Defendant’s SNAP based on this information. The Department offered no evidence to refute this claim.
- 4) The parties agreed during the hearing that the child’s living arrangements for the period of time from October 2008 through today’s date is very clear and therefore relevant in regard to the IPV issue. Although evidence was provided for an earlier timeframe, the parties agreed that the evidence is not clear as to -----’s living arrangements prior to October 2008; therefore, that timeframe will not be considered for the purposes of this hearing.
- 5) The Department’s witness, -----, who is the Defendant’s ex-husband and -----’s father, testified that the child has not visited the Defendant at all since October 2008, and that he has lived in his household for this entire timeframe.
- 6) -----, the Defendant’s son, testified that he has only visited his mother on two occasions since October 2008. He stated once was for his grandmother’s funeral in July 2009. He added that, while visiting a second time, he obtained his learner’s permit from the Department of Motor Vehicles.
- 7) The Department presented evidence (D-11) which shows that the child was removed from the Defendant’s SNAP case in April 2008 due to fraud investigation findings. This evidence, in the form of case comments made by the Department, also shows that the Defendant came into the local West Virginia Department of Health and Human Resources’ office on April 8, 2008 and stated that she has her son from 3:00 P.M. Friday to 9:00 P.M. Sunday and that she claimed this should constitute more than fifty percent (50%) of the time, allowing him to be added back to the benefits. The worker documented that she explained to the Defendant that because the child was attending school in ██████████ County, West Virginia, it was not possible for her to have him in her home more than fifty percent (50%) of the time and the child was not added back to the SNAP. This evidence clearly shows that the Defendant was aware of the Department’s policy that requires an individual to reside with her more than fifty percent (50%) of the time in order to be included in her SNAP.
- 8) The Defendant testified that since October 2008 ----- has not lived with her more than fifty percent (50%) of the time. She stated that during the timeframe in question, her son visited her the two times mentioned by him in his testimony, as well as a few more times which she cannot remember clearly. She stated that she believed she was eligible for SNAP for her son because of the determination previously made by a Department employee around 2005 or 2006 that he lived in her home approximately one hundred ninety one (191) days per year. Her testimony during the hearing clearly supports that he was spending very little time with her after October 2008. She added that she receives disability social security benefits due to being bipolar and

having depression, which causes her to be “loopy” and sometimes unaware of what she is doing. She offered this as an explanation to her failure to report more accurately.

9) 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.

10) 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 Food Stamp Act of 1977, Food Stamp regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamps.

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.

11) Common Chapters Manual 700, Appendix A, Section B, 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.

12) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an Intentional Program Violation as defined in Section B of this Appendix.

13) The Defendant signed numerous Rights and Responsibilities forms (D-6) thereby acknowledging the following pertinent responsibilities:

4) I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive SNAP benefits as follows: First Offense – one year; Second Offense – two years; Third Offense – permanently.

48) I also understand that if I give incorrect or false information or if I fail to report changes that I am required to report, I may be required to repay any benefits I receive and I may also be prosecuted for fraud. I also understand that any person who obtains or attempts to obtain benefits from DHHR by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device can be charged with fraud.

49) I certify that all statements on this form have been read by me or read to me and that I understand them. I certify that all the information I have given is true and correct and I accept these responsibilities.

14) 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 the Food Stamp program state that a Food Stamp Program 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 Food Stamp benefits.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) The Defendant clearly was aware of her responsibility to report accurate information and the penalties involved. She signed numerous Rights and Responsibilities forms during the period in question which supports that she was knowledgeable of those rights and responsibilities. These forms clearly inform the individual that giving incorrect or false information may be considered fraud, and the penalties involved for providing false information.
- 4) The evidence is also clear in that the Defendant intentionally reported false information about her household composition on numerous occasions in order to receive SNAP. She repeatedly reported that her son, -----, lived with her when he did not. This is found to be intentional. The Defendant was clearly aware of her household circumstances during the timeframe of October 2008 through May 20, 2010, and she falsely reported incorrect household composition information.
- 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 composition.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The penalty will begin July 1, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of May, 2010.

**Cheryl Henson
State Hearing Officer**