



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review

Joe Manchin III
Governor

P.O. Box 1736
Romney, WV 26757

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

October 18, 2010

----- and -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your Administrative Disqualification Hearing held September 23, 2010. The purpose of this hearing was to determine whether or not you committed an Intentional Program Violation.

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 the Supplemental Nutrition Assistance Program is based on current policy and regulations. These regulations provide 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 an 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 which was submitted at your hearing revealed that both of you intentionally withheld information from the Department by failing to report -----'s absconder status from the state of [REDACTED]

It is the decision of the State Hearing Officer to Uphold the proposal of the Department to implement a 12-month Intentional Program Violation against both of you.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Lori Woodward, Repayment Investigator

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

----- and
-----,

Co-Defendants,

v.

**Action Number: 10-BOR-1656
10-BOR-1657**

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing for ----- and ----- . 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 originally scheduled for September 1, 2010 and rescheduled based on the Department's request. The hearing was convened on September 23, 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:

-----, Co-Defendant

-----, Co-Defendant

Lori Woodward, Repayment Investigator (RI)

Michael Peters, Economic Service Worker (ESW) and Department witness

Presiding at the hearing was Eric L. Phillips, 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 the Defendants committed an Intentional Program Violation and should be disqualified for one year from participation in the Supplemental Nutrition Assistance Program or SNAP.

V. APPLICABLE POLICY:

Code of Federal Regulations, 7 CFR §273.16
Common Chapters Manual, Chapter 700, Section 740
West Virginia Income Maintenance Manual, Chapter 1.2, 9.1, 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1a Computer printout of case comments from the Department's benefit issuance system dated June 2, 2008
- D-1b Combined Application and Review Form dated June 2, 2008
- D-1c Computer printout of questions asked during Supplemental Nutrition Assistance Program benefits intake interview
- D-2 Notice of Decision dated June 3, 2008
- D-3 Combined Application and Review Form with associated case comments dated June 24, 2008
- D-4 Combined Application and Review Form with associated case comments dated October 29, 2008
- D-5 Combined Application and Review Form with associated case comments dated May 28, 2009
- D-6 Combined Application and Review Form with associated case comments dated December 1, 2009
- D-7 Letter from [REDACTED] Department of Correction, Division of Community Corrections dated July 14, 2008
- D-8 Incarceration and Confinement Verification from [REDACTED] Department of Correction Combined Records
- D-9 Food Stamp Claim Determination Worksheet
- D-10 Notification of Intent to Disqualify dated June 16, 2010
- D-11 West Virginia Income Maintenance Manual Chapter 1.2, 1.4, 2.2, 9.1
- D-12 West Virginia Income Maintenance Manual Chapter 20.2 and Common Chapters Manual 740-740.11

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on July 28, 2010 from the West Virginia Department of Health and Human Resources, hereinafter Department (Exhibit D-8). The Department contends that the Defendants committed an Intentional Program Violation (IPV) and recommends that the Defendants be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twelve (12) month period.

- 2) This hearing was originally scheduled for September 1, 2010 and rescheduled to September 23, 2010 based on a request from the Department. Notice of the rescheduled hearing was mailed to the Defendants via first class mail on August 19, 2010. The Defendants appeared in person for the scheduled Administrative Disqualification Hearing.
- 3) On June 2, 2008, the Defendants completed an application for Supplemental Nutrition Assistance benefits, hereinafter SNAP. The Department's witness, Mr. Michael Peters, Economic Service Worker (ESW), completed Exhibit D-1b, Combined Application and Review Form with the Defendants, as part of their application for SNAP assistance. Mr. Peters acknowledged that he completed a face-to-face interview and indicated that he asked all pertinent questions which related to the determination of the Defendant's eligibility for SNAP assistance. Mr. Peters verified that all questions on Exhibit D-1c were related at the face-to-face interview including "Is anyone in your household a fleeing felon, parole violator, or recipient of simultaneous multiple benefits?" Mr. Peters purported that the Defendants did not indicate that any of the household members applying for assistance were a fleeing felon or parole violator during such interview. Mr. Peters stated that according to departmental policy all fleeing felons and parole violators are ineligible to receive SNAP assistance.

On June 3, 2008, the Department issued Exhibit D-2, Notice of Decision which informed the Defendants that all eligibility requirements for SNAP benefits had been established and their application for benefits had been approved retroactive to June 2, 2008.

- 4) Ms. Woodward purported that on April 1, 2010, -----, Co-Defendant, completed an application for Medicaid assistance. During such interview, ----- presented Exhibit D-7, Letter from the [REDACTED] Department of Correction (NCDOC) dated July 14, 2008, that documented that his classification as a state wanted fugitive in the state of [REDACTED]. Exhibit D-7 documents in pertinent part:

Our records show you were convicted August 2, 2006 for a DWLR [Driving While License Revoked], sentenced 45 days in NCDOC suspended to 12 months of supervised probation. Per DCC [Division of Community Corrections] policy you were to remain within the jurisdiction of the court unless granted written permission to leave by the court or the probation officer, in that about the 10th of January 2008 you moved from your residence at [REDACTED] without notifying your probation officer of your whereabouts. It has been brought to my attention by the FBI that you have applied for assistance at the above address from Social Security Administration. It is my duty to inform you that this assistance will be denied as long as you are a state wanted fugitive. I am aware you are not extraditable, but it would be in your best interest to return back to [REDACTED] and take care of these matters.

Upon further communication and investigation with the [REDACTED] DOC, the Department discovered that ----- was classified as an "absconder" meaning that ----- fed or escaped his supervised probation. Ms. Woodward presented Exhibit D-8 to verify that the [REDACTED] DOC characterized --- -- as an absconder from his supervised probation and such documentation listed the charges against the Co-Defendant.

- 5) Ms. Woodward stated that ----- absconder status from the [REDACTED] DOC makes him a fleeing felon, resulting in his ineligibility for SNAP benefits. Ms. Woodward provided Exhibit D-4, Combined Application and Review Form dated October 29, 2008 and Exhibit D-5, Combined Application and Review Form dated May 28, 2009 to document that the Defendants failed to report -----'s absconder status and that he was considered a fleeing felon. Ms. Woodward noted that on Exhibit D-4, both Defendants acknowledged, by their signatures, that all information reported at the intake interview was true and correct. The Defendants marked "yes" to question #49 on such exhibit which documents:

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.

- 6) Ms. Woodward testified that the Defendants made false statements on numerous occasions concerning -----'s absconder status and that it is the responsibility of the SNAP applicant to provide true and accurate information concerning their circumstances at each application and review. Ms. Woodward presented Exhibit D-9, Food Stamp Claim Determination worksheet to establish that the false information provided by the Defendants concerning -----'s absconder status, resulted in an overpayment of SNAP benefits in the amount of \$3905.00 for the period of June 2, 2008 through April 2010.

- 7) ----- testified that he received two "driving revoked" citations in the state of [REDACTED] in 2006. ----- indicated that the charges were initially classified as misdemeanors and he was placed on probation. ----- stated that he did not believe that the circumstances concerning the misdemeanor citations were a "big deal" and that he only owed restitution to the state of [REDACTED] in the amount of \$245.00. ----- stated that he was on probation and believed that the misdemeanor charges in [REDACTED] would not affect his residence in West Virginia. ----- acknowledged that he received Exhibit D-7 from the [REDACTED] DOC in 2008 but failed to open the letter as it was his probation officer in [REDACTED] and he no longer resided in that state. ----- testified that he opened the letter when he was notified of the suspension of his Social Security Administration benefits. ----- indicated that he had no prior knowledge of his absconder status until he opened such letter and that his misdemeanor convictions developed into a felony absconder status upon his relocation from the state of [REDACTED]. ----- testified that he remains in such status and he can remedy the absconder status if he pays restitution for the fine or serves 45 to 90 days of imprisonment.

----- stated that he and his wife have been married for the last 27 years. He stated that he informed his wife that he had been issued driving citations and that he was responsible to pay a fine. ----- indicated that he does not allow his wife to get involved in his business and she had no knowledge of the absconder status and should not be held responsible for his misunderstandings.

- 8) West Virginia Income Maintenance Manual Chapter 9.1 documents in pertinent part:

Individuals Excluded by Law

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:

-Fleeing to avoid prosecution or custody/confinement after conviction, for a crime or attempt to commit a crime that is a felony under the law of the place from which the individual is fleeing- individual is ineligible while indentified in this category

-Violating a condition of probation or parole which was imposed under federal or state law-individual is ineligible as long as the violation continues

9) West Virginia Income Maintenance Manual Chapter 1.2 indicates:

The client's responsibility is 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, Chapter 9.1 indicates:

Persons who have been found guilty of an IPV are disqualified as Follows:

- 1st Offense: 1 Year
- 2nd Offense: 2 Years
- 3rd Offense: Permanent

11) Common Chapters Manual 740.11.D states as follows:

Intentional Program Violation - For the purpose of determining through an Administrative Disqualification Hearing whether or not a person has committed an Intentional Program Violation, the following criteria will be used. 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 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.

12) Common Chapters Manual 740.22.M states as follows:

Decision – The Hearing Officer shall base the determination of Intentional Program Violation on clear and convincing evidence that demonstrates that the Defendant committed, and intended to commit, Intentional Program Violation as defined in Section 740.11 of this Chapter. The Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper

evidence given at the hearing. In rendering a decision, the Hearing Officer shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and court orders. The decision shall include reference to all pertinent law or policy. If the Hearing Officer rules that the defendant committed an Intentional Program Violation, he or she will include the length and the beginning date of the disqualification penalty.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern SNAP benefits dictate that a 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 Defendants intentionally committed an Intentional Program Violation.
- 3) The evidence presented during the Administrative Disqualification Hearing revealed that the ----- was convicted in August 2006 for a driving citation. As a result of the conviction, the Defendant received a 45-day imprisonment term which was suspended to 12 months of supervised probation. Evidence demonstrates that the Defendant violated the terms of the supervised probation when he relocated to West Virginia in January 2008, without the written permission of the [REDACTED] Department of Correction. Testimony indicated that the ----- had knowledge of the traffic citations and notification was sent to the household, in which the Defendant shares with his wife, notifying the Co-Defendant that he was a state wanted fugitive and was considered an absconder from his supervised probation. The Department's evidence is clear that both Defendants withheld information concerning a household member's absconder status on numerous occasions during the time period in question in order to receive SNAP assistance. Such evidence involving the withheld information concerning -----'s absconder status clearly establishes intent on behalf of the Defendants.
- 4) In accordance with SNAP policy and regulations, an Intentional Program Violation has been committed by both Defendants and a disqualification penalty must be applied. This disqualification for a first (1st) offense is one (1) year. Both Defendants are subject to said disqualification which will begin December 1, 2010 and will run concurrently for the next 12 months.

IX. DECISION:

Intentionally making a false or misleading statement or misrepresenting facts to secure SNAP benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Department's proposal to apply a twelve (12) month disqualification against both Defendants is upheld.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of October 2010.

Eric L. Phillips
State Hearing Officer