



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

Joe Manchin III
Governor

Board of Review
P.O. Box 1736
Romney, WV 26757

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

October 22, 2010

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your Supplemental Nutrition Assistance Program (SNAP) Administrative Disqualification Hearing held September 21, 2010. The purpose of this hearing was to determine whether or not you intentionally 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 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 which was submitted at your hearing revealed that you did intentionally mislead the Department by reporting an incorrect household composition and failing to remove yourself from your assistance group when you relocated from the state.

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 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**

-----,

Defendant,

v.

Action Number: 10-BOR-1770

**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 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 fair hearing was convened on September 21, 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
Lori Woodward, Repayment Investigator

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 Defendant 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
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 Order of Appointment of Minor Guardian from Jefferson County Family Court dated October 20, 2006
- D-2 Computer printout of case comments from Department benefit issuance system
- D-3 Combined Application and Review Form with associated Rights and Responsibilities dated March 27, 2007
- D-4 Notice of Decision dated March 28, 2007
- D-5 Statement from ----- dated July 18, 2008
- D-6 Statement from ----- dated May 3, 2010
- D-7 Combined Application and Review Form with associated Rights and Responsibilities dated October 1, 2007
- D-8 Food Stamp Claim Determination Worksheet
- D-9 Notification of Intent to Disqualify
- D-10 West Virginia Income Maintenance Manual Chapter 1.2, 1.4,2.2, 9.1
- D-11 West Virginia Income Maintenance Manual Chapter 20.2, Common Chapters Manual 740.11
- D-12 Combined Application and Review Form with associated Rights and Responsibilities dated September 25, 2006

Defendant' Exhibits:

Defendant-1 United States Army identification

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on August 18, 2010. The Department contends that the Defendant committed an Intentional Program Violation (IPV) and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twelve (12) month period.
- 2) Lori Woodward, Repayment Investigator presented into evidence Exhibit D-1, Order of Appointment of Minor Guardian from the ██████████ County Family Court. This exhibit documents that the Honorable ██████████ appointed guardianship of the Defendant's children ----- (1), ----- (1), and ----- (1), triplets, to her mother on October 19, 2006.

----- indicated that the information concerning the guardianship of the children was not made available to the Department until March 17, 2008, when the Defendant's mother applied for Departmental benefits for the children and herself (Exhibit D-2). Upon receipt of the documentation, the Department investigated the residency of the children.

- 3) The Department's investigation concluded that the children continued to receive benefits with their biological mother after the implementation of the guardianship petition (Exhibit D-1). Exhibit D-3, Combined Application and Review Form dated March 27, 2007, demonstrates that the Defendant's mother acted as an authorized representative for the Defendant and completed an assistance eligibility review in the Defendant's absence. Exhibit D-3 includes a signed and undated note from the Defendant which states, "My mom, -----, has my permission to go to my appointments if I am not able to come." At the recertification, the Defendant's mother indicated that all children resided with the Defendant.

On March 28, 2007, the Department issued Exhibit D-4, Notice of Decision to the Defendant which documents the approval of benefits from the completed assistance redetermination.

- 4) ----- testified that the Defendant completed an additional recertification for SNAP benefits on October 1, 2007, reporting that she shared the same residence as the children, although guardianship had previously been granted to her mother in October 2006.

----- presented Exhibit D-5, Statement from ----- [Defendant's mother] dated July 16, 2008. This exhibit documents that ----- resided with his grandmother, ----- since April 2005. Additionally, ----- documented the following in the exhibit:

My daughter ----- could not physically, emotionally, or financially take care of the triplets. She willingly gave them to me and made sure they received their benefits.

Additionally, ----- completed Exhibit D-6 on May 3, 2010 which documents in pertinent part:

I, -----, am the grandmother of -----, ----- and ----- . They were born on 3/19/05 in [REDACTED] WV. The children came to live at my home when they were released from the hospital in April, 2005, around the 10th of that month.

My daughter, -----, was also living with me at that time.

In June or July of 2005, we sold our home and I told ----- she was going to have to move. She, -----, moved in with my sister ----- . ----- kept the triplets with her at my sister's home while we got moved and got our double wide set up and got settled in. She, -----, had the triplets for 2 months. They came back to live with me in Sept. or Oct. of 2005.

Since at least October, 2005 the triplets have lived with me. -----, their mother, has had each of the triplets stay with her one night each. They stayed with her separately only that one night each.

...

In [sic] October 19, 2006, we had an order of Appointment of Minor Guardian for the children. She did this because she was going into the army. While she was in the army she gave me the food stamp card and medical cards for the

children. She was not in the army very long and did not complete her basic training.

Up until I came in to apply for benefits in March 2008, ----- always made sure the triplets got their medical cards and their share of food stamps.

- 5) ----- indicated that the Defendant intentionally violated program rules by stating the triplets were living in her household, when they had been residing with her mother since October 2006. ----- presented Exhibit D-8, Food Stamp Claim Determination Worksheet to establish that the false information provided by the Defendant and her mother concerning the Defendant's household composition, resulted in an overpayment of SNAP benefits in the amount of \$5361.00 for the period of December 2006 through March 2008.
- 6) The Defendant testified that she was in the military during the timeframe in question and presented Exhibit Defendant-1 to demonstrate her enlistment in such military service. The Defendant stated that she was not a resident of the state and that she granted guardianship of the children to her mother (Exhibit D-1). The Defendant stated that she advised her mother to apply for benefits for the children, but the Department informed her to have all of the benefits transferred to her mother so there were no delays in the children's benefits. The Defendant testified that her mother failed to have the assistance transferred and acted as her authorized representative, without permission, to complete a recertification for the case. The Defendant stated that the note listed in Exhibit D-3 was from a prior recertification in which the Defendant was unable to complete a recertification and required her mother to act as her authorized representative. The Defendant indicated that she was not in West Virginia when her mother completed the recertification under her name.

The Defendant stated that she enlisted in the army for one year and relocated back to West Virginia after her discharge. The Defendant claimed that she was residing with her children at her mother's residence when she completed the October 1, 2007 recertification. The Defendant also provided contradictory testimony stating that she resided with her mother for the months of June, July, and August 2007 and relocated after such timeframe. The Defendant stated that upon her departure from her mother's residence she relocated to her aunt's residence at -----, [REDACTED] WV. It shall be noted that Exhibit D-3, D-4, D-7, D-12 document the Defendant's aunt's address as the Defendant's location of residence.

- 7) 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.

- 8) West Virginia Income Maintenance Manual, Chapter 1.4 documents in pertinent part:

The AG must be informed that it is responsible for the repayment of any overissuance [sic] caused by erroneous information provided by the authorized representative.

- 9) 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

10) 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.

11) 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, an 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 Defendant intentionally committed an Intentional Program Violation.

- 3) The testimony and evidence presented during the Administrative Disqualification Hearing revealed that in October 2006, the Defendant granted guardianship of her children to her mother in order for the Defendant to relocate from the state to fulfill her military obligations. The evidence presented revealed that the children have resided with the grandmother from 2005 to the present and that the Defendant failed to remove herself from the benefits or have the children's benefits transferred to their guardian when she relocated from the state. The Defendant's testimony indicates that she completed an additional recertification for benefits in October 2007 when she had not resided in the same household with the children since August 2007. The Defendant stated that she was residing with her aunt in October 2007 and failed to provide evidence to the contrary to establish that the children in question resided in her residence upon her return from military service. Furthermore, the Defendant failed to terminate her benefits and continued to receive assistance while she was enlisted in military service; therefore intent is established.
- 4) In accordance with SNAP policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first offense is one (1) year.
- 5) The Defendant is the only assistance group member subject to said disqualification penalty. The one year disqualification penalty 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 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**