



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 27, 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 October 19, 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 intentionally provided false information concerning your husband's felony drug conviction in order to receive benefits for which you were not entitled.

It is the decision of the State Hearing Officer to Uphold the action 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-1928

**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 October 19, 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:

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 Combined Application and Review Form dated October 12, 2007 with associated Rights and Responsibilities and a computer printout of case comments from the Department's benefit issuance system
- D-2 Combined Application and Review Form dated March 17, 2008 with associated Rights and Responsibilities and a computer printout of case comments from the Department's benefit issuance system
- D-3 Combined Application and Review Form dated September 8, 2008 with associated Rights and Responsibilities and a computer printout of case comments from the Department's benefit issuance system
- D-4 Food Stamp Claim Determination Worksheet
- D-5 Notification of Intent to Disqualify dated June 4, 2010
- D-6 West Virginia Income Maintenance Manual Chapter 1.2, 1.4, 2.2, 9.1
- D-7 West Virginia Income Maintenance Manual Chapter 20.2, Common Chapters 740.11

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on September 17, 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) Notice of scheduled hearing was mailed to the Defendant on September 20, 2010 via Certified Restricted Delivery mail. Notice was received from the United States Postal Service that the Defendant received such scheduling notice on September 21, 2010.
- 3) The hearing was convened as scheduled at 9:30 A.M., on the requested date, as of 9:45 A.M., the Defendant failed to appear. As set forth in the Code of Federal regulations found at § 7 CFR 273.16 (e) (4), and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual Chapter 740.20), the hearing was conducted without the Defendant in attendance.
- 4) On June 4, 2010 and July 30, 2010, the Department issued the Defendant Exhibit D-5, Notification of Intent to Disqualify, indicating that the Department had reason to believe the Defendant intentionally violated a food stamp rule. This exhibit documents in pertinent part:

Based on the evidence developed through our investigation, the agency believes that ----- intentionally violated the food stamp program by not reporting at SNAP application on 10/12/07 and subsequent applications and reviews that her husband, -----, had a felony drug conviction as of 3/1/07.

It shall be noted that the Department seeks an IPV only against the Defendant because her husband had been previously permanently disqualified from the SNAP program due to his felony drug status.

- 5) Lori Woodward, Repayment Investigator testified that on October 12, 2007, the Defendant and her husband completed Exhibit D-1, Combined Application and Review Form as part of their application for SNAP benefits. The Defendant and her husband reported that no member of the household had any prior felony drug convictions and both applicants completed the Rights and Responsibilities section of the application, specifically acknowledging question #47 which states:

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.

Additionally, both household members signed the documentation affirming their knowledge of all rights and responsibilities associated with their SNAP application. On October 12, 2007, the Department approved the Defendant's application for SNAP benefits.

- 6) On March 17, 2008, the Defendant and her husband completed a recertification for SNAP benefits (Exhibit D-2) and reported that no member of the household had any prior felony drug convictions, as well as completing the Rights and Responsibilities portion of the SNAP application certifying that all information related during the recertification was true and correct.
- 7) On September 8, 2008, the Defendant and her husband completed an additional recertification for SNAP benefits. During the recertification, the Defendant revealed that her husband had a March 1, 2007 felony drug conviction.
- 8) Ms. Woodward testified that the Defendant's husband's felony drug conviction status resulted in his ineligibility for SNAP assistance. Ms. Woodward presented Exhibit D-4, Food Stamp Claim Determination Worksheet to establish that the false information provided by the Defendant concerning her husband's felony drug conviction resulted in an overpayment of SNAP assistance to the household in the amount of \$1281.00 for the period of October 2007 through September 2008.
- 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 documents:

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:

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 803 (6) of the Controlled Substance Act-Length of Exclusion-Permanent

- 11) 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

- 12) 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.

- 13) 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) Evidence presented during the Administrative Disqualification Hearing is clear that the Defendant's husband was convicted of a drug felony six months prior to the household's initial SNAP application. The evidence is also clear that, on multiple occasions, the Defendant reported that no member of the household had ever been convicted of a drug felony. As a result of the Defendant's misrepresentation of her husband's situation, an overpayment of SNAP benefits was issued in which the household was ineligible to receive.
- 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**