



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

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D.
Cabinet Secretary

December 27, 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 December 15, 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 (IPV) 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, SNAP Regulations, or any State statute relating to the use presentation, transfer, acquisition, receipt or possession of SNAP. 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 circumstances 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 February 1, 2011.

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-2141

**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 December 15, 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:

Natasha Jemerison, State Repayment Investigator, Department Representative
-----, 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:

Movant's (Department) Exhibits:

- D-1 Benefit Recovery Referral Screen from RAPIDS dated December 15, 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 Combined Application Form (CAF) dated October 24, 2008 and supporting documents
- D-6 Rights and Responsibilities form dated October 24, 2008
- D-7 CAF dated May 28, 2009 and supporting documents
- D-8 Rights and Responsibilities form dated May 28, 2009
- D-9 School records, witness statements, employer records, and Department of Motor Vehicle records
- D-10 Notification letters dated July 19, 2010
- D-11 WV Income Maintenance Manual Sections 20.6, 2.2

Defendant'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 Department of Health and Human Resources (Department) on October 28, 2010. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and made a fraudulent statement or misrepresentation regarding her household circumstances in order to receive SNAP (formerly known as the Food Stamp Program), and is recommending that she be disqualified from participation in SNAP for a period of one (1) year.
- 2) Notification of the December 15, 2010 hearing was mailed to the Defendant on or about November 10, 2010 via first class mail delivery, as the Defendant is a current recipient of

benefits through the Department and resides at an address known to be good by the Department.

3) The hearing was convened as scheduled at 11:00 a.m. and as of 11:20 a.m. the Defendant failed to appear or notify the Board of Review of any conflict preventing her from appearing. 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 or about July 19, 2010 the Department sent the Defendant a Notification of Intent to Disqualify (D-10) form, indicating that it had reason to believe she intentionally violated a SNAP rule. The form also included the following:

Based on the evidence developed through our investigation, the agency believes that ----- intentionally violated the food stamp program by: not reporting ----- in the household. The evidence to prove this allegation consists of: applications, statements, income verification.

5) The Department presented evidence to show that the Defendant completed a SNAP application interview (D-5) with a Department worker on October 24, 2008 at which time she reported that her household consisted of herself and her daughter, ----- . She reported no other household members. She listed her household address as [REDACTED] West Virginia. She signed the Rights and Responsibilities form (D-6) indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.

6) The Department also presented evidence (D-7) to show that the Defendant completed another SNAP application interview with the Department on May 28, 2009 at which time she again reported that her household consisted of only herself and her daughter. She did not report any other household members, and she again listed her household address as [REDACTED] West Virginia. She signed the Rights and Responsibilities form (D-8) indicating she understood her responsibility to report accurate and truthful information and the penalties for failure to do so.

7) The Department conducted an investigation into the Defendant's household composition during November 2009 and determined that -----, who is the father of -----, also resided in the Defendant's home, and that they resided at [REDACTED] West Virginia – and not in [REDACTED] West Virginia. The Department contends that the Defendant falsely reported her household composition and other circumstances during the October 2008 and May 2009 interviews with the Department, and that ----- resided with her during both these periods of time at an address not reported by her.

8) The Department presented evidence (D-9) from the [REDACTED] County, West Virginia Board of Education, dated August 28, 2009, which shows that the Defendant reported to them that ----- was a parent on emergency contact information for their child, and that his place of employment was [REDACTED]. The Defendant listed her address on the form as [REDACTED] West Virginia.

9) Additional evidence (D-9) consists of three (3) witness statements obtained by -----, a Front End Fraud Unit Investigator for the Department. ----- testified that she obtained a sworn witness statement on July 18, 2008, from -----, an individual who lives at [REDACTED]

[REDACTED] West Virginia. She stated that ----- told her that he has lived at the [REDACTED] address for approximately two (2) years, and that he knows the Defendant and -----s have lived at their [REDACTED] address together since he moved in. ----- testified that she also obtained another witness statement on the same date from the mail carrier for the Defendant's delivery area. She added that the mail carrier reported to her that he has been delivering mail to the Defendant's address for the past seven (7) months, and that although he doesn't know the Defendant personally, he has delivered mail to both her and -----s at the [REDACTED] address since beginning work on the route. Additionally, ----- testified that she also obtained a witness statement from the Defendant's landlord on July 22, 2008. She stated the landlord told her that the Defendant and -----s have lived together at the [REDACTED] property for at least four (4) years – since 2004.

- 10) Additionally, -----, another Front End Fraud Unit Investigator for the Department, testified that she also conducted an investigation into the Defendant's household composition during October 2009. She stated that she also obtained a witness statement (D-9) from the Defendant's landlord, who lives at [REDACTED] in [REDACTED] West Virginia. She stated that the landlord told her that she had previously provided a statement to the Department about the Defendant and -----s living together, and that nothing has changed since that time.
- 11) Additional evidence (D-9) from -----'s employer shows that he has been employed with [REDACTED] in [REDACTED] West Virginia, since April 2005, and that he listed his address with them as [REDACTED] West Virginia. The evidence also shows that ----- received regular earned income from the company throughout the period in question.
- 12) Further, evidence from the West Virginia Department of Motor Vehicles' records (D-9) shows that ----- listed his address with them as [REDACTED] West Virginia. This evidence was last issued on June 2, 2006.
- 13) 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.
- 14) 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.

- 15) 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.

16) 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.

17) The Defendant signed numerous Rights and Responsibilities forms 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.

18) 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 SNAP program provide that a SNAP 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 SNAP.

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 truthful and accurate information and the penalties involved for failing to do so. She read and signed numerous Rights and Responsibilities forms during the period in question which clearly inform her of these responsibilities.
- 4) The evidence is also clear in that the Defendant intentionally reported false information about her household circumstances in order to receive SNAP. She reported on two separate occasions that ----- did not live in her household, when in fact he did. Numerous witness statements, as well as other written evidence, support that she lived with ----- at [REDACTED] West Virginia. She also reported living at an address other than [REDACTED] which was shown to be false.
- 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 circumstances.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The penalty will begin February 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of December, 2010.

**Cheryl Henson
State Hearing Officer**