



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241**

**Joe Manchin III
Governor**

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

January 15, 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 January 13, 2010 to determine whether 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.

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 Section 20.2 and Code of Federal Regulations-7 CFR Section 273.16)

Information submitted at the hearing reveals that you withheld information about your co-habitor's college enrollment and your employment status, resulting in an incorrect determination of your SNAP (formerly Food Stamp) allotment.

It is the decision of the State Hearing Officer that you committed an Intentional Program Violation and a disqualification penalty will be applied.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Tammy Hollandsworth, Repayment Investigator, DHHR

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

-----,

Defendant,

v.

Action Number: 09-BOR-2274

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

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from an Administrative Disqualification Hearing concluded on January 15, 2010 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.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The purpose of the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, 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 an EBT card to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

-----, Defendant

Tammy Hollandsworth, State Repayment Investigator, DHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

It should be noted that the hearing was conducted telephonically.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Defendant committed an Intentional Program Violation and should be disqualified from participation in the SNAP (formerly Food Stamp Program) for a period of one (1) year.

V. APPLICABLE POLICY:

7 CFR Section 273.16 USDA Code of Federal Regulations
WVDHHR Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual Sections 1.2.E, 9.1, 20.1, 20.2 and 20.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 IG-BR-31 Hearing Summary
- D-2 Food Stamp Claim Determination Form (September 2007- January 2008)
- D-3 Food Stamp Calculation Sheets
- D-4 Food Stamp disbursement information
- D-5 Food Stamp allotment determination
- D-6 Case member history
- D-7 Case comments
- D-8 Verification from ██████████ Community & Technical College
- D-9 Copy of QC-14 dated May 8, 2008 revealing error in SNAP allotment
- D-10 West Virginia Income Maintenance Manual Section 9.1.A.2.f
- D-11 Combined Application and Review Form and Rights and Responsibilities signed by Defendant on August 29, 2007
- D-12 Copy of IG-BR-44 Waiver of Administrative Disqualification Hearing form and IG-BR-44a Notice of Intent to Disqualify
- D-13 Copy of IFM-7d appointment letter sent to Defendant
- D-14 West Virginia Income Maintenance Manual Section 1.2.E
- D-15 West Virginia Income Maintenance Manual Sections 20.1, 20.2 and 20.6.A
- D-16 7 CFR Section 273.16 USDA Code of Federal Regulations
- D-17 Bureau of Employment Programs Wage Details for Defendant

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from State Repayment Investigator Tammy Hollandsworth on November 20, 2009. The Repayment Investigator contends that the Defendant committed an Intentional Program Violation and recommends that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, for a period of one (1) year.

- 2) Information submitted by the Department indicates that the Defendant completed a SNAP redetermination on August 29, 2007, signing a Combined Application and Review Form with associated Rights and Responsibilities (D-11). The Defendant's signature is located on Page 10 of the review form, attesting that she had provided complete and truthful information to the Department.

The Repayment Investigator contends the Defendant failed to report that her co-habitor, ----, was enrolled as a full-time student at [REDACTED] Community and Technical College. The Repayment Investigator indicated that the college semester began on August 20, 2007, prior to the Defendant's SNAP redetermination. Page 5 of the review form indicates that the Defendant was asked about ----'s enrollment status and the listed response is "not enrolled." The Defendant's enrollment status was recorded as "full time." Verification of ----'s college enrollment (D-8) was obtained in conjunction with a Quality Assurance Review of the Defendant's SNAP case. In the document, the college representative indicated that ---- was a full-time student, with an enrollment date of July 16, 2007. The verification stated that ---- had no work study agreement. The Repayment Investigator testified that ---- was enrolled for nine (9) semester hours during that period, which is considered more than half-time. Based on this information, the Repayment Investigator determined that ---- was ineligible for SNAP benefits during the period of September 2007 through January 2008.

In addition, the Repayment Investigator testified that the Defendant reported her own full-time college student status during the SNAP redetermination, but had indicated she was starting a job and would be working at least 20 hours per week. According to case comments dated September 5, 2007 (D-7), the Defendant provided a statement from the employer indicating that she would start work on September 3, 2007 for about 20 hours per week.

According to case comments, the Department worker was informed by the employer on October 29, 2007 that the Defendant never appeared for work in September 2007 after obtaining the employment verification form. The Department determined that the Defendant began work at [REDACTED] and became an eligible college student in November 2007 as the result of her employment status. Bureau of Employment Programs Wage Details (D-17) reveal that the Defendant earned \$600 for the fourth quarter of 2007.

- 3) A Food Stamp Claim Determination Form (D-2) indicates that the Claimant and her co-habitor were ineligible for SNAP benefits in September 2007 and October 2007. While ---- remained ineligible, the Defendant became eligible for SNAP benefits as a one-person Assistance Group from November 2007 through January 2008. Exhibit D-2 reveals that the Defendant received an over issuance of \$986 in SNAP benefits for the period of September 2007 through January 2008.
- 4) The Defendant testified that she did not intentionally withhold information from the Department. She stated that she was unaware that ---- had enrolled in college, that he should not have been considered a full-time student, and that she believes he failed his courses. The Defendant testified that she worked at [REDACTED] as a server for 20 hours per week, but only earned \$3 per hour plus tips. She contended that she was working in October 2007, but no evidence was provided to verify this information.

- 5) West Virginia Income Maintenance Manual Section 1.2.E (D-14) states that the client's responsibility is to provide information about his/her circumstances so the worker is able to make a correct decision about his/her eligibility.
- 6) West Virginia Income Maintenance Manual Section 9.1.A.2.f (D-10) states that students are ineligible to participate in the SNAP unless they meet certain exemptions.

An individual is not considered a student if:

- He is under age 18.
- He is age 50 or over.
- He is physically or mentally disabled. See Section 12.15.
- He is attending high school.
- He is enrolled full-time in a school or training program which does not meet the definition of an institution of higher education. Vocational schools which are a substitute for high school are not considered institutions of higher education.

An institution of higher education is a business, technical, trade or vocational school that normally requires a high school diploma or its equivalent for enrollment in the curriculum or a college or university that offers degree programs whether or not a high school diploma is required for a particular curriculum. For this definition, a college includes a junior, community, 2-year or 4-year college.

- He is participating in an on-the-job training program. This does not include the practical experience requirements which may be part of some courses of study, i.e., student teaching, internships, etc.

A person is considered to be participating in on-the-job training, and thus not considered a student, during the period of time that he is being trained by the employer. During the period of time that he is only attending classes, he is considered a student.

This section goes on to list several exceptions to the student policy and states that individuals who are employed at least 20 hours per week, or 80 hours per month, and who are paid for the employment, are eligible to participate in the SNAP. In addition, students participating in a State or Federally-funded College Work Study Program during the school year are considered eligible students, as are individuals who attend school less than half-time.

- 7) West Virginia Income Maintenance Manual Section 20.2 (D-15):

When an AG (Assistance Group) has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference

between the allotment the client received and the allotment he should have received.

8) West Virginia Income Maintenance Manual Section 20.2.2 (D-15):

IPV's [*sic*] include making false or misleading statements, 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.

Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (Assistance Group) members who committed the IPV.

The penalties are as follows: (Section 9.1, A, 2, g) 1st Offense: 1 year (Disqualification).

9) WVDHHR Common Chapters Manual Section 740.11.D 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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when an Assistance Group has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim.
- 2) If it is determined that an Intentional Program Violation has been committed, an appropriate disqualification penalty is imposed on the Assistance Group.
- 3) Evidence reveals that the Defendant's co-habitor began college on August 20, 2007 and the Defendant falsely reported his student status to the Department during a SNAP redetermination on August 29, 2007. It is unreasonable to believe that the Defendant was unaware of her co-habitor's student status at that time. Information from the college revealed that ----- was considered a full-time student at nine (9) semester hours and received no work study.

The Defendant, who was also a full-time student, provided documentation to the Department indicating that she would begin working 20 hours per week in September 2007, however, her employer informed the Department she did not appear for work at that

time. The Department determined that the Defendant did not become an eligible college student until November 2007 after she began working.

- 4) The Defendant falsely reported her co-habitor's educational circumstances and failed to inform the Agency of her true employment status. As a result, she received SNAP benefits to which she was not entitled. Therefore, the Department is correct in its proposal to impose an Intentional Program Violation.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to impose an Intentional Program Violation penalty. The penalty period will begin in March 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th Day of January, 2010.

**Pamela L. Hinzman
State Hearing Officer**