



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

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

May 25, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the SNAP Administrative Disqualification Hearing held May 4, 2010, for the purpose of determining whether an Intentional Program Violation (IPV) was committed by you.

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, formerly known as the Food Stamp Program, is based on current policy and regulations. Some of these regulations state as follows: 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, Chapter 20.2; Code of Federal Regulations 7 CFR §273.16)

Information submitted at the hearing reveals that you did not provide false or misleading information about your household composition during a SNAP eligibility interview.

It is the decision of the State Hearing Officer that an Intentional Program Violation was not committed by you.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Debbie Roberts, Repayment Investigator

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

-----,

Defendant,

v.

Action Number: 10-BOR-852

**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 concluded on May 25, 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. This hearing was convened on May 4, 2010.

II. PROGRAM PURPOSE:

The purpose of SNAP, formerly known as the 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 EBT 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

-----, Defendant's witness

-----, Defendant's witness

Debbie Roberts, Repayment Investigator

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in 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 West Virginia Income Maintenance Manual, Chapters 1.2; 2.2; 20.2; 20.6; Code of Federal Regulations, 7 CFR §273.16
- D-2 Combined Application and Review form, dated July 16, 2009
- D-3 Rights and Responsibilities form (DFA-RR-1), dated July 16, 2009
- D-4 Benefit Recovery Referral screen print
- D-5 Court Order, Family Court of ██████████ County, West Virginia, entered March 10, 2009
- D-6 Food Stamp Claim Determination form (ES-FS-5); supporting calculations
- D-7 Notification of intent to disqualify; Waiver of Administrative Disqualification Hearing

Defendant's Exhibit:

Defendant-1 Notice of Family Court Hearing; Petition for Child Support

VII. FINDINGS OF FACT:

- 1) The Department is alleging an act of Intentional Program Violation, or IPV, in the Defendant's case, due to falsely reporting household composition during an eligibility interview for SNAP, formerly known as the Food Stamp Program.
- 2) The Code of Federal Regulations, 7 CFR §273.16(c), defines an IPV as:
 - (c) Definition of intentional Program violation. 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 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).

- 3) The Department presented the Combined Application and Review form (Exhibit D-2) and the Rights and Responsibilities form (Exhibit D-3) from a SNAP eligibility review on July 16, 2009. These forms were signed by the Defendant. The forms listed the Defendant's son as residing in the Defendant's household.
- 4) The Department presented a court order (Exhibit D-5) from the Family Court of ██████████ County, West Virginia, entered March 10, 2009. This order granted the divorce of the Defendant from her husband at the time, and awarded extended shared parenting "...with the father being the primary residential parent."
- 5) The Department presented documentation (Exhibit D-6) showing the calculation of a SNAP overissuance claim resulting from a reduction in household size in the Defendant's case. A claim was determined from July 2009 through October 2009 in the amount of \$568.00. The Department additionally confirmed that the Defendant has no prior IPV offenses, and that the proposed IPV would be a first offense.
- 6) The Defendant testified that during the period from July 2009 through October 2009, her son resided with her "80% of the time." -----, the Defendant's father, testified, repeating the Defendant's statement. -----, the Defendant's step-mother, testified that every time she goes to the Defendant's residence, the Defendant's son has been there. The Defendant further testified that around the time in question the Defendant's ex-husband was homeless and could not provide a residence for their son, and that although she did not initially petition for a modification of child support based on the change in residence of their son, she has since done so indirectly by applying for Medicaid for her son.
- 7) The West Virginia Income Maintenance Manual, Chapter 9.1.A.2.h, states:
 - h. 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. CONCLUSION OF LAW:

- 1) The Department did not establish that the Defendant falsely reported household composition. Although the court order gave instructions for shared parenting, the Defendant's explanation that the actual residential circumstances differed – and the reason why – was plausible. The Defendant and two family members offered convincing testimony that the Defendant's actual household composition differed from what was ordered by the Family Court of ██████ County, West Virginia. The Department was incorrect in its determination that an IPV was committed by the Defendant.

IX. DECISION:

The Department's determination of an IPV and proposal to apply a SNAP disqualification is **reversed**. No disqualification penalty will be applied.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of May, 2010.

**Todd Thornton
State Hearing Officer**