



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

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

Earl Ray Tomblin
Governor

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

May 24, 2012

Dear ----- :

Attached is a copy of the Findings of Fact and Conclusions of Law on your Supplemental Nutrition Assistance Program Administrative Disqualification Hearing held May 14, 2012. 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 consists of having intentionally made a false or misleading statement, or misrepresented, concealed or withheld facts; or committed any act that constitutes a violation of the Food Stamp Act, SNAP regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of SNAP benefits. 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 household composition in order to receive SNAP benefits which you were not legally entitled.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to implement a 12 month Intentional Program Violation. The disqualification penalty will begin on July 1, 2012 and will run consecutively for the next 12 months.

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 AND HUMAN RESOURCES
BOARD OF REVIEW**

IN RE: ----- ,

Defendant,

v.

ACTION NO.: 12-BOR-1010

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened May 14, 2012.

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-WVDHHR

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

This hearing was held telephonically.

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 December 29, 2011
- D-2 Application for Emergency Assistance dated January 6, 2012
- D-3 Application for Emergency Assistance dated January 10, 2012
- D-4 Written Statement from ----- stamped March 2, 2012
- D-5 Information from [REDACTED] County Schools
- D-6 Written Statement from ----- dated December 16, 2011
- D-7 Food Stamp Claim Determination
- D-8 Notification of Intent to Disqualify
- D-9 West Virginia Income Maintenance Manual Chapter 1.2, 2.2, and 9.1
- D-10 West Virginia Income Maintenance Manual Chapter 20.2 and Common Chapters 740.11

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request for an Administrative Disqualification Hearing on April 2, 2012. 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) On April 9, 2012, a Notice of Scheduled Hearing was issued to the Defendant, via certified restricted mail delivery, to her address at -----, -----, North Carolina. The Defendant received and signed for this notice on April 11, 2012.
- 3) The hearing convened as scheduled at 9:00 A.M., on the requested date, and as of 9:15 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 March 15, 2012, the Department issued the Defendant a Notification of Intent to Disqualify (Exhibit D-4), indicating that the Department had reason to believe the Defendant intentionally violated a SNAP rule. This exhibit documents in pertinent part:

Based on evidence developed through our investigation, the agency believes that [Defendant] intentionally violated the food stamp program by claiming ----- in her household on 12/29/11 SNAP review when in fact she had gone to live with her dad in [REDACTED] Co. 12/16/11.

- 5) The Department contends that the Defendant provided false statement concerning her household composition at her recertification for SNAP benefits and subsequent applications for Emergency Assistance.
- 6) The Defendant completed a recertification for SNAP benefits (Exhibit D-1) on December 29, 2011. On the application, the Defendant listed herself, her husband, her son, and her daughter as members of the household.
- 7) The Defendant completed an application for Emergency Assistance for rent (Exhibit D-2) on January 6, 2012. On the application, the Defendant listed herself, her husband, her son, and her daughter as members of the household.
- 8) The Defendant completed an additional application for Emergency Assistance for rent (Exhibit D-3) on January 10, 2012. On the application, the Defendant listed herself, her husband, her son, and her daughter as members of the household.
- 9) Lori Woodward, Repayment Investigator, testified that the Department became aware that the Defendant's daughter, -----, had been residing with her father in [REDACTED] County, West Virginia since December 16, 2011. -----, the child's father, provided a written statement (Exhibit D-4) indicating that his daughter resided in his household since December 16, 2011. Additionally, Ms. Woodward presented information from [REDACTED] County Schools (Exhibit D-5) which documents that ----- was enrolled in [REDACTED] Middle School, effective January 10, 2012.
- 10) Ms. Woodward presented a written statement (Exhibit D-6) from the Defendant which documents in pertinent part:

----- has my permission to care for our child, -----, temporarily from Dec. 16, 2011 to June 16, 2012. So she can go to [REDACTED] County for school. She has been having disciplinary problems at school as well as at home in [REDACTED]
- 11) Ms. Woodward provided a Food Stamp Claim Determination (Exhibit D-7) to demonstrate that by providing false information concerning her household composition, an overpayment of SNAP benefits was issued to the Defendant in the amount of \$309.00 for the months of January 2012, through February 2012.
- 12) 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.

13) 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

14) 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.

15) Common Chapter Manual 740.22 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, 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 require 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 SNAP benefits.
- 2) The regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 3) Evidence is clear that the Defendant's daughter had been residing with her father in ██████████ County, West Virginia effective December 16, 2011. The Defendant completed a recertification for SNAP benefits on December 29, 2011, reporting her daughter to be a member of the household, when in fact she was residing with her father. Additionally, the Defendant completed subsequent applications for Emergency Assistance and identified her daughter as a member of the household. This false information provided by the Defendant at her SNAP recertification resulted in an overpayment of SNAP benefits in which the Defendant 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 July 1, 2012 and will run consecutively 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 May, 2012.

Eric L. Phillips
State Hearing Officer