



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

June 14, 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 June 7, 2012. The purpose of this hearing was to determine whether or not you 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 withheld information concerning your employment in order to receive SNAP benefits to 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. The disqualification penalty will begin on August 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
Andrew LaCara-Repayment Investigator

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1130

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing for ----- . The hearing convened on June 7, 2012 and was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual.

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:

-----, Defendant
-----, Defendant's witness
-----, Defendant's witness
Andrew LaCara, Repayment Investigator-WVDHHR

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 Employment Data from [REDACTED]
- D-2 WV Health Care Coverage for Kids and Expectant Moms Recertification form dated December 29, 2010
- D-3 Computer printout of case comments from January 2011 through October 2011
- D-4 Combined Application and Review Form with associated Rights and Responsibilities dated June 6, 2011
- D-5 Food Stamp Claim Determination
- D-6 Cash Assistance Claim Determination
- D-7 Notification of Intent to Disqualify
- D-8 Copy of United States Postal Service Domestic Return Receipt
- D-9 Hearing Request
- D-10 West Virginia Income Maintenance Manual Chapters 1.2, 2.2, and 9.1
- D-11 West Virginia Income Maintenance Manual Chapter 20.2 and Common Chapters § 740.11

Defendant's Exhibits:

- DE-1 Various Income Verifications

VII. FINDINGS OF FACT:

- 1) The Board of Review received a request (Exhibit D-9) for an Administrative Disqualification Hearing on April 26, 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 March 12, 2012, the Department issued the Defendant a Notification of Intent to Disqualify (Exhibit D-7), indicating that the Department had reason to believe the Defendant intentionally violated a SNAP rule. This exhibit documents in pertinent part:

Based on the evidence developed through our investigation, the agency believes that [Defendant] intentionally violated the food stamp program by [Defendant] was hired by -----, Inc. DBA as [REDACTED] on 11/22/10 and received her first paycheck 12/5/10. Due to [Defendant's] receipt of West Virginia Works, she was required to report her employment by 12/02/10, which was not done. [Defendant] did not report this income on her KIDS-1 review form she turned in dated 12/9/10, just days after receiving her first paycheck. [Defendant] had a SNAP/West Virginia Works review on 06/06/11. At this review, she reported having no income of any kind when in fact she was currently employed by [REDACTED]

- 3) The Department contends that the Defendant failed to report her employment income in a timely manner and withheld this income at recertification interviews for SNAP and Medicaid assistance.
- 4) Andrew LaCara, Repayment Investigator, testified that the Defendant was a recipient of WV WORKS cash assistance and was required to report employment within ten days of the date of hire.
- 5) Mr. LaCara presented the Defendant's employment data from [REDACTED] (Exhibit D-1). This exhibit documents the Defendant's hire date as November 22, 2010, and lists her monthly income from January 2011 through November 2011. Additionally, this exhibit documents the Defendant's income for 2010; however, it labels income as December 5, 2011, of \$144.42 and December 20, 2011, of \$279.27.
- 6) On December 29, 2010, the Defendant submitted a recertification for children's Medicaid benefits (Exhibit D-2). On the application, the Defendant listed WV WORKS cash assistance as the only income available to the household and failed to report her employment income.
- 7) Mr. LaCara indicated that the Defendant made multiple office visits (Exhibit D-3) in January 2011 and April 2011, and failed to report the change in her financial circumstances.
- 8) On June 6, 2011, the Defendant completed a recertification interview (Exhibit D-4) for SNAP benefits. During this interview, the Defendant reported no income available to the household.
- 9) Mr. LaCara presented a Food Stamp Claim Determination (Exhibit D-5) to demonstrate that by withholding her employment information and income from the Department, an overpayment of SNAP benefits was issued to the Defendant in the amount of \$1,771.00 from January 2011 through November 2011. Additionally, Mr. LaCara presented a Cash Assistance Claim Determination (Exhibit D-6) to demonstrate that by failing to report her employment information and income in a timely manner, an overpayment of SNAP benefits was issued to

the Defendant in the amount of \$3,514.00 for the months of January 2011 through November 2011.

- 10) The Defendant signed and completed the Rights and Responsibilities (Exhibit D-4) portion of each application and specifically acknowledged the following statements:

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. In addition, I will have to repay any benefits received for which I was not eligible.

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 information I have given is true and correct and I accept these responsibilities.

- 11) The Defendant asserted that she provided her case worker from the Department with her income information in January 2011 and provided various income verifications (Exhibit DE-1) for the year 2011. The Defendant indicated that she relocated to ██████████ County, West Virginia, and stated that she did not report this income because she believed she had previously reported the information and was under the impression that this information would be available to her new case workers. The Defendant indicated she did not intentionally withhold information concerning her income from the Department, and believed that she should not be held responsible in the event that the Department failed to input her income information correctly. The Defendant's witnesses indicated that they transported the Defendant to her various appointments and assisted her with providing information to the Department in a timely manner.

- 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 Chapters 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 specify 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 to demonstrate that the Defendant committed an IPV.
- 3) Evidence is clear that the Defendant commenced employment with [REDACTED] in November 2010. While the Defendant maintains she reported this income to the Department in a timely manner, she provided no evidence to support her claim that the Department received this

information. Furthermore, the Defendant completed a recertification interview for SNAP benefits in June 2011, reported no income available to her household, and failed to offer information concerning her employment at that time. Therefore, evidence reveals that the Defendant withheld information concerning her employment income at her recertification interview in order to receive SNAP benefits to which she was not legally entitled. The Defendant's failure to provide this information concerning her household's income establishes intent.

- 4) The false information provided by the Defendant at her SNAP recertification interview concerning her household's income resulted in an overpayment of SNAP benefits.
- 5) In accordance with SNAP policy and regulations, an IPV has been committed and a disqualification penalty must be applied. The disqualification penalty for a first offense is one (1) year.
- 6) The Defendant is the only assistance group member subject to said disqualification penalty. The one-year disqualification penalty will begin August 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 penalty 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 June 2012.

Eric L. Phillips
State Hearing Officer