



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

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

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

Earl Ray Tomblin
Governor

June 11, 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 6, 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 unearned income in order to receive SNAP benefits which you were not 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 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: -----,

Defendant,

v.

ACTION NO.: 12-BOR-1135

**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 ----- convened on June 6, 2012. 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.

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:

Andrew LaCara, Repayment Investigator

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 Combined Application and Review Form with associated Rights and Responsibilities dated May 4, 2010
- D-2 Computer printout of data exchange information with the Social Security Administration
- D-3 Computer printout of Benefit Payment History for Unemployment Compensation Income
- D-4 Application for West Virginia School Clothing Allowance
- D-5 Combined Application and Review Form with associated Rights and Responsibilities dated November 1, 2010
- D-6 Telephonic Recertification Form dated April 5, 2011
- D-7 Computer printout of case comments May 2010 and July 2011
- D-8 INROADS application for West Virginia School Clothing Allowance dated July 22, 2011
- D-9 Employment Data from -----
- D-10 Food Stamp Claim Determination
- D-11 Notification of Intent to Disqualify dated April 3, 2012
- D-12 Hearing Request dated April 23, 2012
- D-13 West Virginia Income Maintenance Manual Chapter 1.2, 2.2, and 9.1
- D-14 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 (Exhibit D-12) 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 May 2, 2012, a Notice of Scheduled Hearing was issued to the Defendant, via first class mail delivery, to her address at -----, West Virginia. This notice was not returned as undeliverable by the United States Postal Service.

- 3) The hearing convened as scheduled at 11:30 A.M., on the requested date, and as of 11:45 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 April 3, 2012, the Department issued the Defendant a Notification of Intent to Disqualify (Exhibit D-11), 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: When [Defendant] applied for SNAP benefits on 5/4/10, [Defendant] claimed her house hold [sic] members had no income. In actuality, [Defendant's daughter] was receiving \$831.00 per month in Social Security benefits. [Defendant] reapplied for SNAP on 11/1/10. At this reapplication, [Defendant] claimed the house hold's [sic] only income was from her WV Unemployment benefits, again withholding information about [Defendant's daughter's] Social Security. When [Defendant] had her SNAP review on 4/13/11, she again claimed that the house hold's [sic] only income came from her WV Unemployment and again withheld information concerning her daughter's Social Security.

- 5) The Department contends that the Defendant provided false statements during her application and recertification interviews for SNAP assistance by failing to report her daughter's Social Security Survivor's benefits.
- 6) The Defendant completed an application interview for SNAP assistance (Exhibit D-1) on May 4, 2010. During the application process, the Defendant reported that her household consisted of herself and her two children and no income was available to the household from any source. Additionally, the Defendant reported that she may be receiving Unemployment Compensation Income (UCI) in the future, but was unsure of an exact timeframe (Exhibit D-7).
- 7) The Defendant completed an application for West Virginia School Clothing Allowance (Exhibit D-4) on July 19, 2010. The Defendant reported her monthly UCI of \$1076.00 as the only income available to the household.
- 8) The Defendant reapplied for SNAP assistance (Exhibit D-5) on November 1, 2010. During the application process, the Defendant reported her UCI was the only income available to the household.
- 9) The Defendant completed a telephonic SNAP recertification (Exhibit D-6) on April 13, 2011. During the recertification interview, the Defendant reported her UCI as the only income available to the household.

- 10) The Defendant submitted an internet application for the West Virginia School Clothing Allowance (Exhibit D-8) on July 22, 2011. The Defendant reported her employment income from ----- as the only income available to the household. However, the Department discovered that the Defendant was receiving Social Security Survivor's benefits for her daughter (Exhibit D-2) and failed to report the receipt of this income.
- 11) Andrew LaCara, Repayment Investigator, presented income information from the Social Security Administration (Exhibit D-2) which indicates, effective October 2009, the Defendant's daughter began receiving \$831.00 in monthly Social Security benefits. Mr. LaCara testified that the Defendant had the responsibility to report all household income at each application and recertification, but she failed to provide complete information regarding her household's financial circumstances.
- 12) Mr. LaCara presented a Food Stamp Claim Determination (Exhibit D-10) to demonstrate that by proving false information concerning her household's income, an overpayment of SNAP benefits was issued to the Defendant in the amount of \$4,708.00 for the months of May 2010 through August 2011.
- 13) The Defendant signed and completed the Rights and Responsibilities (Exhibit D-1, D-5) 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.

- 14) 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.

- 15) 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

- 16) 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.

- 17) 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 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 that demonstrates the Defendant intentionally committed an IPV.

- 3) Evidence reveals that the Defendant withheld or provided false and misleading information about income available to her household on multiple occasions in order to receive SNAP benefits for which she was not legally entitled. Evidence is clear that Defendant's daughter began receiving Social Security income in October 2009, and the Defendant failed to report the receipt of this income at her May 2010, application for SNAP assistance. The Defendant applied for multiple Department programs from May 2010 to July 2011, and failed to provide information concerning her daughter's income at each application. 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 application interviews concerning her household's income resulted in an overpayment of SNAP benefits for which the Defendant was ineligible to receive.
- 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