



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

June 27, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the Supplemental Nutrition Assistance Program (SNAP), Administrative Disqualification Hearing held June 21, 2012, 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 the Supplemental Nutrition Assistance Program, hereinafter, SNAP (formerly Food Stamp Program) is based on current policy and regulations. Some of these regulations state as follows: 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).

Information submitted at the hearing reveals that you intentionally withheld or concealed information regarding receipt of SNAP benefits from ----- in order to receive SNAP benefits from West Virginia.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. The disqualification will begin effective August 2012.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Rebecca Pancake, RI, DHHR

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

-----,

Defendant,

v.

Action Number: 12-BOR-1161

**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 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 June 21, 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:

Rebecca Pancake, Repayment Investigator (RI), DHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in the SNAP.

V. APPLICABLE POLICY:

7 CFR § 273.16 USDA Code of Federal Regulations
Common Chapters Manual, Chapter 700
West Virginia Income Maintenance Manual, Chapters 1.2, 8.2, 20.2 & 20.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WVDHHR Benefit Recovery Referral
- D-2 West Virginia Income Maintenance Manual, Chapter 8.2
- D-3 West Virginia Income Maintenance Manual, Chapter 1.2
- D-4 7 CFR § 273.16 USDA Code of Federal Regulations
- D-5 Combined Application and Review Form (CAF) and Rights and Responsibilities completed and signed by the Defendant on August 14, 2008
- D-6 WVDHHR Client Contact Report (August 19, 2008 – October 2, 2008)
- D-7 ----- Department of Human Services – Request for Assistance – signed by the Defendant on 4/28/08
- D-8 WV Electronic Benefit Transfer (EBT) history (August 2008 through October 2008)
- D-9 Food Stamp Claim Determination (August 2008 through October 2008)
- D-10 West Virginia Income Maintenance Manual Chapter 20.6
- D-11 Notification of Intent to Disqualify (March 1, 2012) and Waiver of Administrative Disqualification Hearing
- D-12 West Virginia Income Maintenance Manual Chapter 20.2

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from Repayment Investigator Rebecca Pancake on May 4, 2012. Ms. Pancake, representing the Department of Health and Human Resources (Department), contends that the Defendant has committed an Intentional Program Violation, and therefore, she is recommending 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) Notification of the June 21, 2012, hearing was mailed to the Defendant on May 21, 2012, via First Class U.S. Mail as the Defendant is a current recipient of benefits through the Department and resides at a confirmed address.
- 3) The hearing convened as scheduled on June 21, 2012, at 9:00 a.m., 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 found in the West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 740.20, the hearing was conducted without the Defendant in attendance.

- 4) The Department presented evidence (D-1) to indicate a Benefit Recovery Referral (D-1) was submitted to the Repayment Investigator indicating the Defendant was “double-dipping” SNAP benefits in West Virginia and -----.

The Department contends that the Defendant intentionally violated SNAP regulations by withholding information about receiving Food Stamp/SNAP benefits from ----- when she completed her application for SNAP benefits in West Virginia on August 14, 2008 (D-5).

The Department submitted Exhibit D-7 to show that the Defendant was actively receiving SNAP benefits in ----- for the period May 29, 2008, through November 1, 2008, stemming from an application submitted on April 28, 2008.

The Department submitted Exhibit D-9 (Food Stamp Claim Determination with supporting calculations) to confirm the Defendant received \$1,689 in SNAP benefits from West Virginia during the period of August 14, 2008 – October 31, 2008. The Department contends that the Defendant was ineligible for SNAP benefits, and therefore, received benefits to which she was not legally entitled.

The Defendant was residing with her mother, but was reported to have returned to ----- on or about August 29, 2008, (Exhibit D-6, Child Protective Services Client Contact Report) and Exhibit D-9 (EBT Transaction History) confirms that the remaining SNAP benefits were spent in ----- in September and October 2008.

- 5) A review of the Combined Application and Review Form (D-5, page 3), signed by the Defendant on August 14, 2008, reveals that the Defendant reported she was not receiving SNAP benefits from another state.
- 6) The Rights and Responsibilities form completed and signed by the Defendant on the day of SNAP application/Review include the following statement:

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 received Food Stamp 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.

By signing the Rights and Responsibilities, the Defendant certified that she read, understood, and accepted the rights and responsibilities, and that all of the information she provided was true and correct.

- 7) West Virginia Income Maintenance Manual, Chapter 1.2 (E):
The client’s responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.

- 8) West Virginia Income Maintenance Manual, Chapter 8.2 provides that as a condition of eligibility, the client must live within the borders of West Virginia. Intent to remain permanently in West Virginia is not a requirement, although the client must reside in the State for purposes other than vacation. A time limit cannot be set for how long the client must live in West Virginia and the client cannot be required to maintain a permanent or fixed dwelling.

Policy goes on to state that an individual remains a resident of the former state until he arrives in West Virginia with the intention of remaining indefinitely. Therefore, intent to establish or abandon residency must be known before the state of residence is determined.

When an individual, who is receiving SNAP benefits in another state, establishes residence in West Virginia and applies for benefits the Worker must determine when SNAP benefits in the other state were stopped. The individual is eligible in West Virginia for the month following the month he last received benefits in the former state of residence, if otherwise eligible

- 9) West Virginia Income Maintenance Manual, Chapter 20.2:
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.
- 10) West Virginia Income Maintenance Manual, Chapter 20.2 (C) (2):
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: (Chapter 9.1, A, 2, h) 1st Offense: 1 year (Disqualification)
- 11) Common Chapters Manual §740.11.D. 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.

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern SNAP benefits state that a SNAP 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 Food Stamp benefits.

- 2) The evidence reveals that the Defendant withheld or concealed the fact that she was receiving SNAP benefits from ----- when she completed her application for West Virginia SNAP benefits in August 2008. As a result, the Defendant received \$1,689 in SNAP benefits to which she was not legally entitled. This clearly establishes intent.
- 3) The evidence is clear and convincing that the Defendant intentionally committed a SNAP violation as defined in the regulations.
- 4) In accordance with SNAP regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first time offense is twelve months (one year).
- 5) Only the Defendant is subject to this disqualification. The 1-year disqualification will begin effective August 2012.

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 Agency's proposal to apply a SNAP disqualification is **upheld**. The Disqualification period will begin effective August 2012.

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.

**Thomas E. Arnett
State Hearing Officer**