



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

June 21, 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 (ADH) held June 21, 2012, for the purpose of determining whether you committed an Intentional Program Violation (IPV).

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 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 [SNAP] Act, the SNAP Regulations, or any State statute relating 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 period of 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 submitted at the hearing supports that you intentionally provided false information about your household's circumstances in order to receive SNAP benefits for which you were not entitled. You were not notified that you were disqualified prior to this hearing.

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against you based on the determination that you committed an Intentional Program Violation. Your disqualification penalty period will begin August 1, 2012.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Natasha Jemerison, Kanawha DHHR

IN RE: -----,

Defendant,

v.

ACTION NO.: 12-BOR-1221

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 (ADH) 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 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:

-----, Defendant

Natasha Jemerison, Department representative

Presiding at the Hearing was Cheryl Henson, 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 one year from participation in SNAP.

V. APPLICABLE POLICY:

7 CFR § 273.16 USDA Code of Federal Regulations
Common Chapters Manual Chapter 700, Appendix A
West Virginia Income Maintenance Manual §1.2, 9.1.A.2.h and 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- M-1 Benefit Recovery Referral screen from the Department's computer system
- M-2 West Virginia Income Maintenance Manual §1.2, E
- M-3 Food Stamp Claim Determination Form and supporting documentation
- M-4 Code of Federal Regulations 7 CFR 273.16
- M-5 SNAP application form dated May 25, 2010
- M-6 Rights and Responsibilities form dated May 25, 2012
- M-7 Excerpts from Case Comments in Department's various computer systems, written statement from Principal at children's school
- M-8 West Virginia Income Maintenance Manual §2.2
- M-9 West Virginia Income Maintenance Manual §20.6
- M-10 Notification letters to Defendant dated April 30, 2012
- M-11 Notification letters to Defendant dated October 28, 2010

VII. FINDINGS OF FACT:

- 1) A request for an ADH was received by the Board of Review from the Department of Health and Human Resources (Department) on May 24, 2012. The Department contends that the Defendant has committed an IPV and made a fraudulent statement or misrepresentation regarding her household composition in order to receive SNAP benefits, and is recommending that she be disqualified from participation in SNAP for a period of one (1) year.
- 2) The Department contends that the Defendant intentionally reported incorrect household composition for her SNAP household during her May 25, 2010 application interviews by falsely reporting that her sons, ----, lived in her home when they actually resided with their father at a separate address.
- 3) The Department presented evidence which supports that the Defendant completed a SNAP application interview (M-5) on or about May 25, 2010, at which time she reported that her sons lived in her household. She signed the application form (M-5) indicating that she understood her responsibility to report accurate and truthful information and the penalties for failure to do

so. She also signed the Rights and Responsibilities form (M-6) further certifying that she understood her responsibility to report accurate and truthful information.

- 4) Additional evidence (M-7) supports that the Defendant provided false information. The Department's case comments (M-7) in its Child Protective Services computer system shows that the children's father reported to the Department on or about March 2, 2009, that he received a court order which placed the children in his custody, and the caseworker documented that the children live primarily with their father. The Department's Child Support system documented (M-7) on December 30, 2009, that the father received a final court order granting the father primary custody of both children and ordered the Defendant to pay child support to him. The Principal at the children's school signed a written statement (M-7) on or about June 22, 2010, attesting that the children live with their father and that he picks them up from school every day school is in session. He stated that one child has told him he lives with his father. He added that he had not seen the children's mother since sometime around the middle of 2009.
- 5) The Defendant did not dispute the Department's claims that she intentionally reported false information in order to receive SNAP; however, she claims that she believed when she originally received letters from the Department about the IPV back in 2010 that the penalty was imposed at that time. She added that she went for over a year without receiving SNAP and thought that her penalty period was over. She stated that she was upset when she received the recent letters from the Department about the matter and found out that the penalty period had never been started. She had no written evidence to support that the Department told her during 2010 that a disqualification penalty had been applied to her case. She stated that she does not recall exactly what the letters stated.
- 6) The Department presented a copy of the October 2010 notice (M-11) that was mailed to the Defendant. Nothing in the notices informs the Defendant that she has been penalized. The Department's representative, Natasha Jemerison, stated that the Defendant's SNAP terminated during November 2010 because she did not complete a redetermination interview with the Department. She also explained the reason for the delay between the original finding and today's hearing. She stated that several attempts were made during the first few months of 2011 by the Board of Review to notify the Defendant of a scheduled Administrative Disqualification Hearing, but her letters were returned undelivered. The Board of Review cancelled the hearing at that time because the Defendant could not be properly notified.
- 7) West Virginia Income Maintenance Manual §1.2 (E) states that it is the client's responsibility 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 § 20.2 (C) (2) states in pertinent part:

IPV's include making false or misleading statement, misrepresentations, concealing or withholding information, and committing any act that violates the [SNAP] Act of 1977, [SNAP] regulations, or any State statute related to the use, presentation, transfer, acquisition, receipt, or possession of [SNAP].

The individual(s) who is found to have committed an IPV is ineligible to participate in the program for a specified time, depending on the number of offenses committed.

Once an IPV is established, a disqualification penalty is imposed on the AG member(s) who committed the IPV.

- 9) Common Chapters Manual 700, Appendix A, Section B, provides that an IPV 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 [SNAP] Act, the SNAP Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt or possession of SNAP benefits.
- 10) Common Chapters Manual 700, Appendix A, Section G, states that the State Hearing Officer shall base the determination of IPV on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV as defined in Section B of this Appendix.
- 11) West Virginia Income Maintenance Manual §9.1.A.2.h states:

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. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern SNAP state that a SNAP Violation has occurred when an individual intentionally makes a false or misleading statement, misrepresents, conceals, or withholds 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) The Defendant clearly was aware of her responsibility to report truthful and accurate information and the penalties involved for failing to do so. She read and signed the May 2010 application as well as Rights and Responsibilities forms which clearly informed her of these responsibilities.

- 4) The Defendant did not dispute the Department's finding that she committed an IPV; her dispute lies solely on whether the penalty period has already been served prior to this hearing.
- 5) The totality of the evidence supports clearly and convincingly that the Defendant intentionally reported that her sons lived with her when they actually lived with their father. There is insufficient evidence to support that the Defendant was notified during 2010 that she was disqualified from receiving SNAP for one (1) year and that she has already served her disqualification period.
- 6) Therefore, the Department was correct in its determination that the Defendant has committed an IPV by reporting false information about her household composition, and correct in its determination that the disqualification penalty period has not yet been imposed.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The Defendant's disqualification penalty period will begin August 1, 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of June 2012

**Cheryl Henson
State Hearing Officer**