



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241**

**Earl Ray Tomblin  
Governor**

**Rocco S. Fucillo  
Cabinet Secretary**

August 2, 2012

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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 July 26, 2012, to determine 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.

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 Food Stamp Act, 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 time determined by the number of previous Intentional Program Violation disqualifications. (West Virginia Income Maintenance Manual Section 20.2 and Code of Federal Regulations-7 CFR Section 273.16)

While information submitted at the hearing reveals that you did not report your daughter's income - and received SNAP benefits to which you were not entitled for the period of January to April 2012 – intent to violate SNAP regulations cannot be clearly established.

It is the decision of the State Hearing Officer that you did not commit an Intentional Program Violation and a 12-month disqualification penalty will not be applied.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Samantha Close, Repayment Investigator, WVDHHR

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

**IN RE:** -----,

**Defendant,**

**v.**

**ACTION NO.: 12-BOR-1364**

**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 conducted on July 26, 2012, in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources (WVDHHR).

All persons giving testimony were placed under oath.

**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 an EBT card 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 daughter

Samantha Close, Repayment Investigator, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, 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 and should be disqualified from participation in the Supplemental Nutrition Assistance Program for a period of 12 months.

**V. APPLICABLE POLICY:**

7 CFR Section 273.16, USDA Code of Federal Regulations  
WVDHHR Common Chapters Manual Section 740.11.D and 740.22.M  
West Virginia Income Maintenance Manual Sections 1.2.E, 9.1.A, 10.3.DD, 20.2 and 20.2.C.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 Food Stamp Claim Determination form for period of January 2012 through April 2012
- D-3 Food Stamp Allotment Determination and Food Stamp Calculation Sheets for period of January 2012 through April 2012
- D-4 SNAP Issuance History-Disbursement
- D-5 Case Comments dated December 21, 2011
- D-6 Combined Application and Review Form with Rights/Responsibilities signed by Defendant on December 21, 2011
- D-7 Employment Data and Wage History for -----
- D-8 Waiver of Administrative Disqualification Hearing signed by Defendant on May 25, 2012
- D-9 Notification of Intent to Disqualify dated May 22, 2012
- D-10 Case Comments dated May 14, 2012, and May 22, 2012
- D-11 West Virginia Income Maintenance Manual Section 1.2.E
- D-12 West Virginia Income Maintenance Manual Sections 20.1 and 20.2
- D-13 West Virginia Income Maintenance Manual Section 20.6
- D-14 Code of Federal Regulations Section 273.16

**VII. FINDINGS OF FACT:**

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from WVDHHR Repayment Investigator Samantha Close on June 5, 2012. The Repayment Investigator contends that the Defendant committed an Intentional Program Violation and

recommends that she be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamp Program, for a period of 12 months.

- 2) Investigator Close testified that the Department's Investigation and Fraud Management Unit received a referral alleging that the Defendant failed to report all of her household income during a SNAP redetermination completed on December 21, 2012 (see Exhibit D-6). At that time, the Defendant reported that the only household income was Social Security received by the Defendant and her husband, as well as child support received by her granddaughter. Investigator Close provided evidence to demonstrate that the Defendant failed to report that her daughter, -----, had begun work at -----Corporation (-----) on November 22, 2011 (see Exhibit D-7). The Investigator stated that Exhibit D-7 indicates that ----- received her first paycheck on December 16, 2011, prior to the December 21, 2011, SNAP redetermination. Exhibits D-2, D-3 and D-4 reveal that the Defendant received \$1,057 in SNAP benefits to which she was not entitled for the period of January-April 2012.
- 3) The Defendant was sent a Notification of Intent to Disqualify (D-9) and a Waiver of Administrative Disqualification Hearing (D-8) on May 22, 2012. She subsequently sent the Department a signed Waiver, requesting that the Department proceed with a fair hearing.
- 4) The Defendant testified that this was the first time she has received SNAP in 73 years and she only applied for benefits because her granddaughter was residing in her home. While she was aware that her daughter had obtained a job, she contended that she was unaware that her daughter had received any pay at the time of the review.

----- testified that she does not share everything with her mother, that her mother was unaware she had received a pay at the time of the SNAP redetermination, and that she did not know her mother was scheduled to complete a review. She stated that while Wage History information (D-6) indicates she was paid on December 16, 2011, she did not actually receive her first pay until December 20, 2011 (one day prior to the SNAP review), as ----- pays on the 5<sup>th</sup> and 20<sup>th</sup> of each month. ----- purported that her mother becomes easily confused and that she assists her with paperwork. She stated that her mother would not intentionally defraud anyone.

- 5) West Virginia Income Maintenance Manual Section 1.2.E (D-11) states that it is the client's responsibility to provide information about his/her circumstances so the worker is able to make a correct decision about his or her eligibility.
- 6) West Virginia Income Maintenance Manual Section 10.3.DD states that employment earnings are a countable source of income for the SNAP.
- 7) West Virginia Income Maintenance Manual Section 20.2 (D-12):

When an AG (Assistance Group) has been issued more SNAP benefits 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.

8) West Virginia Income Maintenance Manual Section 20.2.C.2 (D-12):

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

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: (Section 9.1A, 2, h) 1st Offense: 1 year (Disqualification).

9) WVDHHR Common Chapters Manual Section 740.11.D provides that an 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 relating to the use, presentation, transfer, acquisition, receipt or possession of Food Stamp benefits.

10) WVDHHR Common Chapters Manual Section 740.22.M states that 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, an 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) Policy states that when an Assistance Group has been issued more SNAP benefits than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. If it is determined that an Intentional Program Violation has been committed, an appropriate disqualification penalty is imposed. The Hearing Officer must base the determination of Intentional Program Violation on clear and

convincing evidence that demonstrates the Defendant committed – and **intended to commit** [emphasis added] – an Intentional Program Violation.

- 2) The Department presented evidence to demonstrate that the Defendant failed to report her daughter's income during her SNAP redetermination on December 21, 2012. While the Defendant indicated that she knew her daughter had obtained a job, both she and her daughter testified that she was unaware that her daughter had received a pay check at the time of the review. Additionally, the Defendant's daughter testified that the Defendant becomes confused at times and needs assistance with paperwork. Considering the reported confusion and the Defendant's limited history with receiving SNAP benefits, it cannot be clearly established that the Defendant intentionally withheld information to receive benefits to which she was not entitled.
- 3) While it is clear that the Defendant incorrectly received SNAP benefits, the imposition of a 12-month SNAP disqualification penalty based on the commission of an Intentional Program Violation cannot be affirmed.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to impose an Intentional Program Violation penalty.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 2nd Day of August, 2012.**

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**Pamela L. Hinzman  
State Hearing Officer**