



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

Rocco S. Fucillo  
Cabinet Secretary

August 7, 2012

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Dear --- and -----:

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 August 2, 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 ----- intentionally provided false information about his household's circumstances in order to receive SNAP benefits for which he was not entitled. The information was insufficient to support that ----- committed an IPV.

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 ----- based on the determination that he committed an IPV. The Department is **reversed** in its proposal to apply a one (1) year SNAP disqualification penalty against -----'. -----' disqualification penalty period will begin September 1, 2012.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Jennifer Butcher, Kanawha DHHR

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

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

**Defendants,**

**v.**

**ACTION NO.: 12-BOR-1428 CN  
12-BOR-1429 WN**

**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 August 2, 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:**

Jennifer Butcher, Department representative  
Tammy Drumheller, Department witness  
Christina Saunders, Department witness

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The questions to be decided are whether ----- and/or ----- committed Intentional Program Violations (IPV) and whether they 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 Department's computer system
- M-2 West Virginia (WV) Income Maintenance Manual §1.2
- M-3 Code of Federal Regulations §7 CFR 273.16
- M-4 SNAP redetermination form dated June 14, 2011, Rights and Responsibilities form dated June 14, 2011, supporting documentation – For -----
- M-5 SNAP application form dated October 11, 2011, Rights and Responsibilities form dated October 11, 2011, supporting documentation – For -----
- M-6 Case comments from Department's computer system dated October 2011 and screen from Department's computer system showing address updated October 20, 2011
- M-7 Case comments from Department's computer system dated October 2011
- M-8 Sworn written statements
- M-9 Computer screen prints from Department's computer system showing household directions
- M-10 Excerpts from WV Income Maintenance Manual §2.2
- M-11 Excerpts from WV Income Maintenance Manual §2.2
- M-12 Food Stamp Claim Determination forms and supporting documentation
- M-13 Excerpts from WV Income Maintenance Manual §20.6
- M-14 Notification letters to Defendants dated May 3, 2012
- M-15 Excerpts from WV Income Maintenance Manual §20.2
- M-16 Excerpts from WV Income Maintenance Manual §20.2
- M-17 Excerpts from WV Income Maintenance Manual §20.2
- M-18 Case comments from Department's computer system dated April 2010 through October 2011

## VII. FINDINGS OF FACT:

- 1) The Board of Review received requests for an ADH from the West Virginia Department of Health and Human Resources (Department) on June 11, 2012, for both ----- . The Department contends that both Defendants have committed an IPV and made fraudulent statements or misrepresentations regarding household composition in order to receive SNAP benefits, and recommends that they be disqualified from participation in SNAP for a period of one (1) year.
- 2) Notification of the August 2, 2012 hearing was mailed to the Defendants separately on or about June 21, 2012, via first class mail delivery, as the Defendants are current recipients of benefits from the Department and reside at an address known to be valid by the Department. The Defendants currently receive benefits as a married couple at the same address.
- 3) -----' hearing was scheduled for 11:00 AM, and -----' hearing was scheduled for 1:00 PM. A hearing was convened at 1:00 P.M., and as of 1:15 P.M., the Defendants failed to appear or notify the Board of Review of any conflict preventing them from appearing as scheduled. As set forth in the Code of Federal Regulations 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 Defendants in attendance.
- 4) The Department presented evidence (M-4) which supports that ----- completed a SNAP redetermination interview on June 14, 2011, at which time she did not report that ----- was living in her household. She provided her residential address as -----, West Virginia. She also reported her mailing address as -----, West Virginia – in care of ----- . She signed the application (M-4) indicating she understood her responsibility to report accurate and true information. She also signed the Rights and Responsibilities form (M-4) further indicating she understood her responsibility to report accurate and truthful information as well as the penalties for failure to do so.
- 5) The Department presented evidence (M-5) which supports that ----- completed a SNAP application on October 11, 2011, at which time he did not report that he was living with ----- . He reported that he lived at -----, in -----, West Virginia. He signed the application (M-5) indicating he understood his responsibility to report accurate and truthful information. He also signed the Rights and Responsibilities form (M-5) further indicating the understanding of his responsibility to report accurate and truthful information as well as the penalties for failure to do so.
- 6) The Department presented evidence (M-6) which supports that on October 20, 2011, ----- requested that his mailing address be changed to -----, West Virginia – in care of ----- .
- 7) The Department's Front-End Fraud Investigator, Tammie Drumheller, testified that she investigated and obtained written statements (M-8) from -----' employer at -----, as well as his neighbor and landlord. The statements (M-8) are dated November 7, 2011, and November 10, 2011. The Defendants' neighbor stated (M-8) on November 7, 2011, that he has lived next door to both ----- and ----- since the "summer of 2011." -----' employer at ----- provided in his November 7, 2011 statement that ----- has worked at ----- since August 1, 2011, and

that the Defendants live across the road from the ----- . The landlord's statement, dated November 10, 2011, indicates that ----- and ----- rent from him on a month by month basis. He provided no timeframe for this arrangement.

- 8) Additional written evidence (M-9) supports that on or about May 31, 2011, the Department documented that ----- lives across from ----- in a two-story white house.
- 9) Additional documented case comments (M-18) from the Department's computer system from April 8, 2010, through October 11, 2011, were provided by the Department. The Department contends that these case comments show a pattern of ----- removing her husband from her case when his presence in the case caused a reduction in benefits.
- 10) The documented comments (M-18) show that on August 3, 2010, ----- reported that her Supplemental Security Income (SSI) was reduced due to ----- employment; she also reported on this date that ----- was no longer living in her household. On November 1, 2010, the documentation shows (M-18) that a Department worker spoke with -----' mother-in-law who, when asked if ----- and ----- lived together, replied that they do live together. ----- was added to ----- case at that time.
- 11) The documented comments (M-18) show that on May 31, 2011, ----- reported that she moved to -----, West Virginia, to live with --- ----- . On June 14, 2011, during her SNAP redetermination interview, ----- reported that she was separated from ----- .
- 12) West Virginia Income Maintenance Manual §2.2, B, specifies that all SNAP AGs (Assistance Groups) must report changes related to eligibility and benefit amount at application and redetermination. SNAP AGs are subject to Limited Reporting requirements and the reporting requirements in this Section apply to recipient AGs only. Limited Reporting is explained as follows:

Once approved, all AG's [*sic*] must report when the total gross earned and unearned income of the AG and all other individuals who reside with the AG exceeds the AG's gross income limit. This must be reported no later than the 10<sup>th</sup> calendar day of the month following the month in which the change occurs.

No other changes are made for these AG's [*sic*] unless the information is reported by an AG member, comes from a source which is verified upon receipt, or from a source which is considered reported. See Changes Acted On for SNAP AG's [*sic*] below.

**EXAMPLE:** An AG consists of a mother and 2 children. In the 3<sup>rd</sup> month, the children's father moves into the residence. At the end of each month, the AG must consider all income sources. The father's income, when combined with the AG's, exceeds the limit for the original 3-person AG. The AG must report this by the 10<sup>th</sup> day of the 4<sup>th</sup> month. The mother calls to report that the household's combined income exceeds the limit. The Worker determines the

cause of the income change and must add the children's father since he is required to be included in the AG.

Even when the new household member is not required to be included in the AG, the excessive income must still be reported. When there is no required change to the AG, a recording must be made in case comments to explore other possible changes at the next redetermination.

- 13) The Department's Food Stamp Claim Determination (M-12) shows that -----' gross income limit for the certification period was \$3200.00. Based on the Department's calculations (M-12), her total gross income (when -----' income was included) did not exceed the gross income limit for her AG; therefore, ----- was not required to report the change during the certification period.
- 14) 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.
- 15) 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.
- 16) 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.
- 17) 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.
- 18) 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:

- 1<sup>st</sup> Offense: 1 year
- 2<sup>nd</sup> Offense: 2 years
- 3<sup>rd</sup> 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 Defendants clearly were aware of their responsibility to report truthful and accurate information and the penalties involved for failing to do so. They read and signed the application form as well as Rights and Responsibilities forms which clearly informed them of these responsibilities.
- 4) The totality of the evidence supports clearly and convincingly that ----- withheld information regarding household composition at his October 2011 redetermination interview. Several witness statements taken during November 2011 attest that ----- began living with ----- at -----, West Virginia, during the summer of 2011. He did not report this.
- 5) SNAP policy specifies that once approved, AGs must report when the total gross earned and unearned income of the AG and all other individuals who reside with the AG exceeds the AG's gross income limit. The AG is not required to report when an individual moves into the home during the certification period unless that person's income, when combined with the AG's income, exceeds the AG's gross income limit.
- 6) There is insufficient evidence to support that ----- intentionally withheld information during of after her June 2011 redetermination interview. The Department's evidence supports that ----- began living with ----- during the summer of 2011. This vague timeframe is not sufficient to include the month of -----' redetermination interview, that being June 2011. Additionally, policy did not require her to report this change during the certification period because the combined household income as determined by the Department during its Food Stamp Claim Determination (M-12) never exceeded the gross income limit (\$3200.00) for her AG.
- 7) Therefore, the Department was correct in its determination that ----- has committed an IPV by reporting withholding information about his household composition during his October 2011 redetermination interview. The Department was not correct in its determination that ----- has committed an IPV.

**IX. DECISION:**

The Department's proposal to apply a one (1) year SNAP disqualification penalty against ----- is **upheld**. His disqualification penalty period will begin September 1, 2012. The Department's proposal to apply a one (1) year SNAP disqualification penalty against ----- is **reversed**.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 7<sup>th</sup> Day of August 2012.**

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**Cheryl Henson  
State Hearing Officer**