



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

Rocco S. Fucillo
Cabinet Secretary

October 23, 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 October 11, 2012, for the purpose of determining whether or not 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: 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 demonstrates that you intentionally provided false or misleading information about your household composition in order to receive SNAP benefits to which you were not legally entitled.

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to apply a 1-year SNAP disqualification penalty against you based on an Intentional Program Violation. This disqualification will begin effective December 1, 2012.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Leonard Madia, RI Supervisor, WVDHHR

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

IN RE: ----,

Defendant,

v.

ACTION NUMBER: 12-BOR-1504

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

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 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 October 11, 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:

Leonard Madia, Repayment Supervisor, WVDHHR

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 or not the Defendant committed an Intentional Program Violation (IPV) and should be disqualified for a specified period from participation in the Supplemental Nutrition Assistance Program (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 Chapters 1.2, 2.2, 9.1, 10.4 & 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Benefit Recovery Referrals dated 9/15/11 and 3/16/12
- D-2 IG-BR-44 (Notification of Intent to Disqualify) and IG-BR-44a (Waiver) – 3/16/12 and 5/7/12
- D-3 7 CFR §273.16 USDA Code of Federal Regulations
- D-4 Information received from ----, ----, ----., dated 3/15/12
- D-5 Work Number Employment and Earnings Verification from [REDACTED] for ---- Employed with [REDACTED] 6/22/09
- D-6 Combined Application and Review Form and Rights and Responsibilities signed by ---- 12/14/10
- D-7 Application for Emergency Assistance dated 12/15/10
- D-8 inRoads Review, Medicaid for Children and Pregnant Women and WVCHIP dated 1/6/11
- D-9 inRoads SNAP Review dated 5/26/11 and Telephone Review and Case Comments dated 6/7/11
- D-10 Case Comments dated 6/17/11 and 6/21/11
- D-11 Food Stamp Claim Determination for January 2011, as well as April, May and June 2011
- D-12 West Virginia Income Maintenance Manual Chapter 1.2
- D-13 West Virginia Income Maintenance Manual Chapter 2.2.B
- D-14 West Virginia Income Maintenance Manual Chapter 2.2.B.4
- D-15 West Virginia Income Maintenance Manual Chapter 20.2.C.2

VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing was received by the Board of Review from the West Virginia Department of Health and Human Resources, hereinafter Department, on June 21, 2012. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the

Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a period of one (1) year.

- 2) Notification of the October 11, 2012 hearing was mailed to the Defendant on September 11, 2012, via First Class U. S. Mail, to the address provided by the Defendant.
- 3) The hearing convened as scheduled at 9 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 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 contends the Defendant intentionally withheld information that ----, father of Defendant's child ----, was residing in the home so that she could obtain more SNAP benefits than she was entitled to receive. The Department noted that because ---- is the father of the Defendant's child, he is required to be included in the Assistance Group (AG), and his income would have reduced the amount of SNAP benefits the AG was eligible to receive.
- 5) The Department submitted Exhibit D-4 (verification from ---- of lease and utility allowance paid) that demonstrates ---- was residing with the Defendant during the period February 2010 through June 2011, and was listed as the co-head of household when determining the rent amount and utility allowance. The Department noted that during this period (February 2010 through June 2011), the Defendant completed four (4) different applications for benefits and failed to report that ---- was residing in her home - Exhibit D-6 (December 14, 2010), Exhibit D-7 (December 15, 2010), Exhibit D-8 (January 6, 2011) and Exhibit D-9 (May 26, 2011).
- 6) ----'s income from Teletech was verified (Exhibit D-5) and used to determine the amount of SNAP benefits the Defendant should have received by including ---- and his income in the SNAP calculations. Exhibit D-11 reveals that the Defendant's AG was overpaid \$221 in January 2011, and \$504 during the period of April 2011 through June 2011 – for a total overpayment amount of \$725.
- 7) The Defendant signed the Rights and Responsibilities form on the dates of application (Exhibit D-6 12/14/10 and Exhibit D-9 5/26/11) and marked “yes” to items #4 and #6 respectively, which state:

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 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 DFA-RR-1, the Defendant certified that she read, understood, and accepted the rights and responsibilities, and that all of the information provided was true and correct.

- 8) West Virginia Income Maintenance Manual, Chapter 10.4:
This section contains policy relating income disregards and deductions and to the computation of and eligibility for Food Stamp benefits. It also states: To determine the coupon allotment, find the countable income and the number in the benefit group (emphasis added).
- 9) 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.
- 10) West Virginia Income Maintenance Manual, Chapter 2.2.B states that all SNAP AG's must report changes related to eligibility and benefit amount at application and redetermination.
- 11) West Virginia Income Maintenance Manual, Chapter 20.2:
When a AG (benefit 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.
- 12) 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), 2nd Offense: 2 years (Disqualification), 3rd Offense: Permanent
- 13) 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.

- 14) Common Chapters Manual 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, Intentional Program Violation as defined in Section 740.11. 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.

VIII. CONCLUSIONS OF LAW:

- 1) The policy and regulations that govern the SNAP state 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 Defendant was notified timely of the October 11, 2012 Administrative Disqualification Hearing, but failed to appear and refute the evidence submitted in support of an IPV. In the absence of any evidence to the contrary, information received at the hearing confirms the Defendant was untruthful about the number of people residing in her home when she applied for SNAP and other benefits administered by the Department. The Defendant knowingly provided false and misleading information about her household composition in order to receive SNAP benefits to which she was not legally entitled. This clearly establishes intent.
- 3) There is clear and convincing evidence that the Defendant committed an Intentional Program Violation as defined in the SNAP policy and regulations.
- 4) Pursuant to SNAP policy and regulations, an Intentional Program Violation has been committed and a disqualification penalty must be applied. The disqualification for a first offense is one (1) year.
- 5) Only the Defendant is subject to this disqualification. The one (1)-year disqualification will begin effective December 1, 2012.

IX. DECISION:

The Department's proposal to apply a one (1)-year SNAP benefit disqualification 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 October 2012.

**Thomas E. Arnett
State Hearing Officer**