



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

August 21, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your Supplemental Nutrition Assistance Program Administrative Disqualification Hearing held August 9, 2012. The purpose of this hearing was to determine whether or not you intentionally committed an Intentional Program Violation.

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 (SNAP) is based on current policy and regulations. These regulations provide that 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).

The information which was submitted at your hearing revealed that you did not intentionally violate SNAP regulations by withholding information concerning your unemployment compensation.

It is the decision of the State Hearing Officer to reverse the proposal of the Department to impose a 12-month Intentional Program Violation.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review
Lori Woodward-Repayment Investigator

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 12-BOR-1511

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This hearing convened on August 9, 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
Lori Woodward, Repayment Investigator

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Defendant committed an Intentional Program Violation and should be disqualified for one year from participation in the Supplemental Nutrition Assistance Program or SNAP.

V. APPLICABLE POLICY:

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHS-1 Internet recertification for SNAP benefits via www.wvinroads.org dated August 4, 2012
DHS-2 Internet recertification for SNAP benefits via www.wvinroads.org dated January 30, 2012
DHS-3 Computer printout of Unemployment Compensation Benefit Payment History
DHS-4 Food Stamp Claim Determination Claim Number 2000207932
DHS-5 Food Stamp Claim Determination Claim Number 9000211439
DHS-6 Food Stamp Claim Determination Claim Number 0000211440
DHS-7 Notification of Intent to Disqualify dated June 11, 2012
DHS-8 Waiver of Administrative Disqualification Hearing dated June 18, 2012
DHS-9 Hearing Request
DHS-10 West Virginia Income Maintenance Manual Chapter 1.2, 2.2, and 9.1
DHS-11 West Virginia Income Maintenance Manual Chapter 20.2, and Common Chapters 740.11

Defendant's Exhibits:

D-1 Hearing Summary
D-2 Information from Workforce West Virginia

VII. FINDINGS OF FACT:

- 1) On June 21, 2012, a request for an Administrative Disqualification Hearing was received by the Board of Review from the Department's Repayment Investigator, Lori Woodward (Investigator Woodward). Investigator Woodward contends that the Defendant committed an Intentional

Program Violation (IPV) and recommends that she be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a twelve (12) month period.

- 2) On June 19, 2012, the Defendant exercised her right to an administrative hearing (Exhibit DHS-9) and attended the scheduled hearing.
- 3) The Department contends that the Defendant intentionally violated SNAP regulations by withholding information concerning her unemployment compensation income (Exhibit DHS-8). Investigator Woodward testified that the Defendant completed a telephonic SNAP recertification interview on August 5, 2011, (Exhibit DHS-1) and reported that her unemployment compensation benefits ceased in August 2011. The Defendant completed an additional SNAP recertification (Exhibit DHS-2) on February 7, 2012, and reported that she was not currently receiving unemployment compensation benefits.
- 4) Investigator Woodward testified that the Department became aware that the Defendant continued to receive unemployment compensation in August 2011 after the recertification and continued to receive this income until May 2012. Investigator Woodward noted that the Defendant's unemployment compensation benefits ceased twice during her receipt of this income. Once on October 31, 2011, with the benefit resuming on November 13, 2011, and again on February 5, 2012, with the benefit resuming on February 21, 2012.
- 5) Investigator Woodward presented a Food Stamp Claim Determination (Exhibit DHS-4, DHS-5) to demonstrate that by withholding information concerning her unemployment compensation, an overpayment of SNAP benefits was issued to the Defendant in the amount of \$6695.00 for the months of September 2011 to May 2012.
- 6) The Defendant testified that she did not intentionally withhold information concerning her income from the Department because her unemployment compensation benefits had depleted during the same timeframe of her SNAP recertification. The Defendant indicated that her unemployment compensation year-end date was September 3, 2011 (Exhibit DHS-3) and she believed she would not continue to receive this income after this date. The Defendant testified that she reported this information to the Economic Service Worker (ESW) who completed her recertification interview and was informed to phone the Department and report if her unemployment compensation benefits resumed. The Defendant testified that she left multiple voice mails reporting the continued receipt of this income with the Department, but did not receive a return phone call. The Defendant testified that her benefits were exhausted in February 2012, but she later received notification that she could apply for "emergency" unemployment compensation benefits. The Defendant testified that after a two week waiting period her unemployment compensation benefits were reinstated and she reported this information to the Department by leaving multiple voice mails and did not receive a return phone call. The Defendant indicated that she received her last unemployment compensation income on May 6, 2012.

7) West Virginia Income Maintenance Manual Chapter 1.2 indicates:

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 9.1 indicates:

Persons who have been found guilty of an IPV are disqualified as follows:

- 1st Offense: 1 Year
- 2nd Offense: 2 Years
- 3rd Offense: Permanent

9) 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.\

10) Common Chapter Manual 740.22 states as follows:

Decision – 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 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) The policy and regulations that govern SNAP benefits specify 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 regulations state there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an IPV.
- 3) The totality of evidence does not support that the Defendant intentionally withheld information concerning her unemployment compensation. Credible testimony provided by the Defendant revealed that she believed her unemployment compensation benefits would cease effective September 3, 2011, due to the year-end date of her benefits (Exhibit DHS-3), and reported this information to the Department at her SNAP recertification on August 5, 2011. Additionally, evidence demonstrates that the Defendant's unemployment compensation benefits had depleted February 5, 2012, two days prior to her SNAP recertification and were reinstated effective February 21, 2012. While it is clear the Defendant incorrectly received SNAP benefits during the timeframe in which she continued to receive unemployment compensation, the imposition of a 12-month SNAP disqualification penalty based on 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 _____ day of August 2012.

**Eric L. Phillips
State Hearing Officer**