



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 E. Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

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

January 20, 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 on November 29, 2011 for the purpose of determining whether an Intentional Program Violation (IPV) was committed by you.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and 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.

An Intentional Program Violation consists of intentionally having 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. [WV Income Maintenance Manual Section 20.2,C,2 and 7 CFR Section 273.16 (c)]

Information submitted at the hearing reveals that you did not intentionally provide false and misleading information about your son's household composition income in order to help him receive SNAP and LIEAP benefits for which he was not entitled.

It is the decision of the State Hearing Officer that an Intentional Program Violation was not committed by you, so no disqualification penalty will be applied.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Trish Kerbawy, Investigation and Fraud Management Supervisor

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 11-BOR-1527

**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 concluded on January 20, 2012 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. The hearing was convened via videoconference and telephone conference call on November 29, 2011, with Defendant at the [REDACTED] County office of the WV DHHR in [REDACTED] WV, Department's Representative at the [REDACTED] County office of the WV DHHR in [REDACTED] WV, and the Hearings Examiner at the [REDACTED] County office of the WV DHHR in [REDACTED] WV. This hearing was originally scheduled for September 9, 2011, but was rescheduled at Defendant's request.

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.

The goal of the Low Income Energy Assistance Program (LIEAP) is to provide financial assistance to eligible households that are affected by rising costs of home heating which are excessive in relation to household income. It is not the purpose of this program to meet the entire cost of home heating during the winter season. Instead, the program is designed to partially offset the continuing rise in costs of home heating.

III. PARTICIPANTS:

-----, Defendant

Trish Kerbawy, Investigations and Fraud Management Supervisor, Department's representative
Joe Hill, WV DHHR, Boone County Office, Department's witness

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and a member of the
State Board of Review.

All persons giving testimony were placed under oath by the Hearings Officer.

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 SNAP.

V. APPLICABLE POLICY:

7 CFR §273.16 Code of Federal Regulations
Common Chapters Manual, Chapter 920
WV State Employee Policy Memorandum 2108
West Virginia Income Maintenance Manual: Chapter 1.2.E, Chapter 9.1.A, Chapter 20.2 and
20.6

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- M-1 Copy of the Code of Federal Regulations (CFR) §273.16 showing disqualifications
for Intentional Program Violations.
- M-2 ES-FS-5, SNAP Claim Determination sheet.
- M-3 Screen Prints from RAPIDS System indicating approval of LIEAP benefits for
Defendant's son.
- M-4 CSLE SNAP Telephone Review notification letter and household information form
for Defendant's son, dated August 23, 2010.
- M-5 Written statement from Defendant to Investigation and Fraud Management unit,
dated March 7, 2011.
- M-6 E-Mail exchange from Defendant to [REDACTED] from May 27, 2010 to
August 12, 2010.
- M-7 Signature pages from Combined Application Forms dated October 1, 2008, March
31, 2009, September 29, 2009 and March 30, 2010.

- M-8 Screen Prints from RAPIDS System indicating approval of NEMT travel payments on behalf of Defendant's son, with Defendant as payee.
- M-9 Case recording from son of Defendant's SNAP case record, dated June 10, 2011.
- M-10 Low-Income Energy Assistance Program (LIEAP) application for Defendant's son, dated February 28, 2011.
- M-11 Emergency LIEAP Payment Voucher, signed and dated March 3, 2011.
- M-12 DHHR Policy Memorandum 2108: Employee Conduct.
- M-13 WV DHHR Common Chapters Manual, Sections 900 to 930.
- M-14 Copy of Income Maintenance Manual Chapter 1.2.E showing customer responsibility for providing accurate information.
- M-15 Copy of Income Maintenance Manual Chapter 9.1 showing policy definition of a SNAP Assistance Group (AG).
- M-16 Copy of Income Maintenance Manual Chapter 20.2 showing SNAP benefit claims and repayment procedures.
- M-17 Copy of Income Maintenance Manual Chapter 26.2 showing LIEAP Program eligibility requirements.
- M-18 Copy of Income Maintenance Manual Chapter 20.6.A showing definitions of Welfare Fraud.

Defendant's Exhibits

- D-1 Written statement by Defendant dated November 20, 2011.
- D-2 Written statement by Defendant dated May 2, 2011.

VII. FINDINGS OF FACT:

- 1) The Investigations and Fraud Management (IFM) unit of the WV DHHR conducted an investigation involving the Defendant, who was a DHHR employee and whose son received SNAP and LIEAP benefits. During this investigation, IFM investigators obtained information indicating Defendant completed benefit reviews for her son as his Social Security Administration benefits payee. The IFM alleges that during these reviews, Defendant reported incorrect information concerning her son's household composition, resulting in his obtaining SNAP and LIEAP benefits to which he was not entitled.
- 2) On September 15, 2011, an Economic Services Supervisor completed a telephone SNAP review with Defendant's son. As part of this review, the son signed and dated a form CSLE, a telephone review form, listing his household expenses, composition and income. (Exhibit M-4.) This review form indicates Defendant's son reported that he paid \$150 per month in rent and about \$200 per month for electricity, that his household consisted of himself and an unrelated roommate, and that the only income in his household was his SSI and Social Security Disability, totaling \$694 per month.
- 3) Department's representative submitted as evidence the signature pages of Common Application Forms (CAFs), which contained information given to various eligibility workers during benefits reviews in the SNAP case of Defendant's son. These pages are dated October 1, 2008, March 31, 2009, September 29, 2009 and March 30, 2010.

(Exhibit M-7.) Each of these documents are signed, “----- for -----.” The CAF signature page states,

I understand my responsibility to provide complete and truthful information. I have reviewed or had read to me the information contained in this automated portion of the application form and I understand the information. I understand that it is a criminal violation of federal and state law to provide false or misleading information for the purpose of receiving benefits to which I am not by law entitled. Under penalty of perjury, I certify that the statements are true and correct.

- 4) On February 28, 2011, Defendant’s son completed and signed an Emergency LIEAP application form. (Exhibit M-10.) Page one of the form lists only Defendant’s son in the household. Page four of the form indicates it was submitted to the ██████ County office of the WV DHHR on February 28 by “office visit to DHHR,” and an Emergency LIEAP payment voucher was issued on March 3, 2011. (Exhibit M-11.) Defendant signed the voucher on her son’s behalf by writing, “----- by ----- 3/3/11.”
- 5) Department’s representative, the IFM supervisor who conducted the investigation, submitted into evidence a Food Stamp [SNAP] Claim Determination form, wherein she calculated Defendant was overpaid SNAP benefits from October 2010 through March 2011, and that the overpayment amount was \$1002. (Exhibit M-3.) Department’s representative also submitted into evidence screen prints from the RAPIDS benefits issuance computer system which indicates that the Department paid \$235 in LIEAP and \$100 in supplemental LIEAP benefits to American Electric Power in the account of Defendant’s son. (Exhibit M-3.)
- 6) Defendant testified during the hearing that she moved in with her son in August 2010. She stated that his roommate had moved out recently. She added that she reported this information to individuals at the ██████ County office of the WV DHHR. She asserted that her son was more than 22 years old, and was able to receive SNAP benefits in his own assistance group (AG).
- 7) The Code of Federal Regulations, 7 CFR §273.16(c) (Exhibit M-1), defines an Intentional Program Violation (IPV) as:
 - (c) Definition of intentional Program violation. 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, the Food Stamp Program [SNAP] 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).

- 8) The West Virginia Income Maintenance Manual, Chapter 1.2.E (Exhibit M-14), states:

The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility . . . The client must be instructed that his failure to fulfill his obligation may result in one or more of the following actions: denial of the application; closure of the active AG [assistance group]; removal of the individual from the AG; repayment of benefits; reduction in benefits.

- 9) The West Virginia Income Maintenance Manual, Chapter 9.1.A.1.b(2) (Exhibit M-15), states:

A group of people who live together, and for whom food is customarily purchased and prepared together, is an AG.

. . .

Natural or adopted children and stepchildren who are under 22 years of age and who live with a parent must be in the same AG as that parent.

- 10) The West Virginia Income Maintenance Manual, Chapter 20.2.C.2 (Exhibit M-16), states:

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

- 11) The West Virginia Income Maintenance Manual, Chapter 20.6.A (Exhibit M-18) states:

The principle statute dealing with obtaining welfare assistance through misrepresentation is Section 4, Article 5, Chapter 9, of the Code of West Virginia, 1936 as amended:

“Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient in obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device:

- Any class of welfare assistance to which the applicant or recipient is not entitled; or
- Any class of welfare assistance in excess of that to which the applicant or recipient is justly entitled . . .

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false . . . [I]t is not essential that an affirmative representation be made. Misrepresentation

may also be the suppression of what is true, as well as in the representation of what is false.

VIII. CONCLUSIONS OF LAW:

- 1) Defendant was an employee of the WV Department of Health and Human Resources, and was the payee for her son's benefit received through the Social Security Administration. As his payee, she signed several review forms as part of his ongoing receipt of SNAP benefits.
- 2) In August, 2010, Defendant moved into the home of her son. Her son's previous roommate had moved out of the residence. By policy, Defendant's son was not required to include her in his SNAP Assistance Group because he was over 22 years of age. However, he was required to indicate who lived in his home and if anyone not included in his AG paid shelter or utility costs.
- 3) Defendant's son completed a telephone SNAP review on September 15, 2010, reporting that he lived with an unemployed roommate, that he paid certain shelter and utility expenses, and that the only income in his SNAP Assistance Group was his benefit from the SSA. A review form stating this information was submitted to the Department, signed by Defendant's son.
- 4) On February 28, 2011, Defendant's son completed and signed an Emergency LIEAP application form. This form reported only the son in the home, and it was submitted to the DHHR. On March 3, 2011, the Department approved the application and Defendant signed a LIEAP payment voucher on her son's behalf.
- 5) There is no question that Defendant's son incorrectly reported his household composition on his SNAP benefits review in September 2010 and on an Emergency LIEAP application from February 2011.
- 6) There was no evidence or testimony to indicate Defendant saw the telephone review form in September 2010 or the LIEAP application in March 2011. Therefore, the Department did not provide clear and convincing evidence that Defendant knew her son misrepresented his living arrangements or assisted him in doing so.

IX. DECISION:

The Department provided ample evidence to the effect that Defendant's son misrepresented his household composition in the SNAP and LIEAP programs. There was no clear and convincing evidence that Defendant knew her son had done this.

The Agency's proposal to apply a SNAP disqualification is **reversed**. The Defendant will not be disqualified from participation in the SNAP program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of January, 2012.

**Stephen M. Baisden
State Hearing Officer**