



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Earl Ray Tomblin
Governor**

**Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704**

**Rocco S. Fucillo
Cabinet Secretary**

September 26, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on the SNAP Administrative Disqualification Hearing held August 21, 2012, 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 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, formerly known as the Food Stamp Program, 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 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 coupons. 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, Chapter 20.2; Code of Federal Regulations 7 CFR §273.16)

Information submitted at the hearing reveals that you withheld information regarding a past drug felony in order to receive SNAP benefits for which you were not entitled.

It is the decision of the State Hearing Officer that an Intentional Program Violation was committed by you and a disqualification penalty of one (1) year will be applied. Your disqualification from SNAP will begin effective November 1, 2012.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Cassandra Burns, Department Representative

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 12-BOR-1545

**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 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 August 21, 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:

Cassandra Burns, Department representative

Presiding at the Hearing was Todd Thornton, 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 SNAP.

V. APPLICABLE POLICY:

Code of Federal Regulations, 7 CFR §273.16
West Virginia Income Maintenance Manual, Chapter 20.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Code of Federal Regulations, 7 CFR §273.16
- D-2 Benefit recovery referral screen print
- D-3 SNAP claim determination form and supporting documentation
- D-4 Verification of felony drug conviction
- D-5 West Virginia Income Maintenance Manual, Chapter 9.1.A.2.g
- D-6 Combined Application and Review Form (CAF) and Rights and Responsibilities form, dated August 3, 2011
- D-7 Case comments, entries dates August 3, 2011, through January 10, 2012
- D-8 SNAP review document, dated December 24, 2011
- D-9 SNAP review document, dated January 9, 2012
- D-10 West Virginia Income Maintenance Manual, Chapter 1.2.E
- D-11 West Virginia Income Maintenance Manual, Chapter 20.2
- D-12 West Virginia Income Maintenance Manual, Chapter 20.6
- D-13 Notification of Intent to Disqualify; Waiver of Administrative Disqualification Hearing; Postal return receipt

VII. FINDINGS OF FACT:

- 1) The Investigations and Fraud Management (IFM) unit of the West Virginia Department of Health and Human Resources (Department) is alleging an act of Intentional Program Violation (IPV) in the Defendant's case due to her withholding information regarding a past drug felony conviction affecting the Defendant's eligibility for SNAP, formerly known as the Food Stamp Program.
- 2) The hearing convened as scheduled at 10:00 a.m., and as of 10:15 a.m., the Defendant failed to appear. As set forth in regulations (7 CFR §273.16(e)(4)), and State Policy (West Virginia Department of Health and Human Resources Common Chapters Manual, 740.20), the hearing was conducted without the Defendant in attendance.

- 3) The Code of Federal Regulations, 7 CFR §273.16(c), defines an 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 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).
- 4) Cassandra Burns, representative for the Department, presented SNAP application documents (Exhibits D-6, D-8 and D-9) signed by the Defendant on August 3, 2011, December 24, 2011, and January 9, 2012, respectively. All of the documents note the question, “Has anyone in your household been convicted of a drug felony for possession, use or distribution of controlled substance committed on or after 08/23/96?” and the negative or blank responses of the Defendant.
- 5) The Department presented documentation (Exhibit D-4) that the Defendant was convicted of a drug felony offense that occurred on September 7, 1996.
- 6) The West Virginia Income Maintenance Manual, Chapter 9.1.A.2.g (Exhibit D-5), states that individuals convicted of such a drug felony are excluded by law from SNAP eligibility and that the exclusion is permanent.
- 7) Ms. Burns testified that as a result of the Defendant withholding information regarding her drug felony conviction, she received an overissuance (Exhibit D-3) of SNAP benefits totaling \$1186.00 between August 2011 and January 2012. Ms. Burns confirmed that the Defendant has no prior IPV offenses, and that the proposed IPV would be a first offense.
- 8) The West Virginia Income Maintenance Manual, Chapter 9.1.A.2.h, states:
- h. Intentional Program Violation (IPV)
- Persons who have been found guilty of an IPV are disqualified as follows:
- 1st offense: 1 year
 - 2nd offense: 2 years
 - 3rd offense: Permanent

VIII. CONCLUSIONS OF LAW:

- 1) The Department clearly established that the Defendant withheld information regarding a past drug felony conviction that by law permanently excludes her from SNAP eligibility. The Defendant responded falsely on three separate occasions to a SNAP eligibility question intended to screen out ineligible drug felons.
- 2) The Department also clearly established the intent of the Defendant to provide misleading information to receive SNAP benefits for which she would not have otherwise been entitled. The Defendant was totally ineligible for SNAP benefits issued in the amount of \$1186.00 between August 2011 and January 2012. The Department was correct in its determination that an IPV was committed by the Defendant.

IX. DECISION:

Intentionally withholding, concealing, or providing misleading facts to secure SNAP benefits constitutes a clear violation of the regulations. Based on the evidence presented, I find the violation intentional.

The Agency's proposal to apply a SNAP disqualification is **upheld**. The Defendant will be disqualified from participation in SNAP for a period of twelve (12) months to begin effective November 1, 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Defendant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of September 2012.

**Todd Thornton
State Hearing Officer**