



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

September 4, 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 (ADH) held September 4, 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 you intentionally provided false information about your household's circumstances in order to receive SNAP benefits for which you were not entitled.

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 you based on the determination that you committed an Intentional Program Violation. Your disqualification penalty period will begin October 1, 2012.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Natasha Jemerison, Kanawha DHHR

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

IN RE: -----,

Defendant,

v.

ACTION NO.: 12-BOR-1710

**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 September 4, 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

Natasha Jemerison, Department representative

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Defendant committed an Intentional Program Violation (IPV) and 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 the Department's computer system
- M-2 West Virginia Income Maintenance Manual §1.2, E
- M-3 Food Stamp Claim Determination Form and supporting documentation
- M-4 Code of Federal Regulations 7 CFR § 273.16
- M-5 SNAP application/review form dated October 18, 2011
- M-6 Rights and Responsibilities form dated October 18, 2011
- M-7 SNAP application/review form dated April 17, 2012
- M-8 Rights and Responsibilities form dated April 17, 2012
- M-9 Information from Department's Child Support Unit dated June 13, 2012
- M-10 West Virginia Income Maintenance Manual §2.2
- M-11 West Virginia Income Maintenance Manual §20.6
- M-12 Notification letters to Defendant dated June 26, 2012

VII. FINDINGS OF FACT:

- 1) A request for an ADH was received by the Board of Review from the Department of Health and Human Resources (Department) on July 16, 2012. The Department contended that the Defendant committed an IPV and made a fraudulent statement or misrepresentation regarding her household income in order to receive SNAP benefits, and recommended that she be disqualified from participation in SNAP for a period of one (1) year.
- 2) Specifically, the Department contended that the Defendant intentionally reported incorrect household unearned income for her SNAP household during her October 18, 2011, and April 17, 2012 review interviews by falsely reporting that she had no unearned income.
- 3) The Department presented evidence which supports that the Defendant completed a SNAP review interview (M-5, M-6) on or about October 18, 2011, at which time she reported that she

had no unearned income in her household. She signed the application form (M-5) indicating that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so. She also signed the Rights and Responsibilities form (M-6) further certifying that she understood her responsibility to report accurate and truthful information.

- 4) Additional evidence (M-7, M-8) supports that the Department completed a SNAP review interview with the Defendant on or about April 17, 2012, at which time the Defendant again reported that her household had no unearned income. She signed the application (M-7) indicating that she understood her responsibility to report accurate and truthful information and the penalties for failure to do so. She also signed the Rights and Responsibilities form (M-8) further certifying that she understood her responsibility to report accurate and truthful information as well as the penalties involved.
- 5) Additional evidence (M-9) supports that the Department's Child Support Unit notified the departmental unit handling the Defendant's SNAP eligibility (Income Maintenance Unit) that the Defendant had been accepting monthly cash child support payments from the absent parent since November 2011. The Child Support Unit supplied the Income Maintenance Unit with a printout from its computer system which shows that the Defendant received monthly payments of child support from May 2011 through May 2012. The amounts received vary from \$150.00 to \$389.00. The printout indicates the Defendant notified the Department's Child Support Unit of the payments on three different occasions – November 18, 2011, January 25, 2012, and May 21, 2012.
- 6) The Department's representative, Natasha Jemerison, is a State Repayment Investigator in the Department's Kanawha County office. She stated that the Defendant signed statements for the Child Support Unit on the three different occasions certifying that she received cash payments during the period in question.
- 7) The Defendant did not dispute the Department's claims that she signed documents for the Child Support Unit as indicated which show she received payments as documented; however, she stated that she did not fully read the documents prior to signing and only did so at the request of the absent parent. The Defendant testified at one point that the absent parent never gives her direct child support payments, but later admitted to receiving cash payments at times. She stated that she did not receive the cash payments as documented (M-9). She added that the absent parent bought food and other items for her household during the period in question, and she did not keep track of the purchases and was not aware of the amount expended by him monthly. She confirmed that she received cash payments monthly from the absent parent for the period of May 2011 through October 2011 ranging in amounts from \$150.00 to \$300.00. She stated that she did not receive cash payments for any of the other months (November 2011 through May 2012). When asked why she reported that her household had no unearned income during her October 18, 2011 SNAP review interview when she confirmed during the hearing that she received \$200.00 child support during October 2011, she stated that she does not recall, but added that she never intended to withhold information. The Department's documentation (M-9) shows that the Claimant received the October 2011 payment on the first (1st) day of that month.

- 8) The Defendant presented a blank child support form (D-1) and testified that she completed the form on the three separate occasions (November 18, 2011, January 25, 2012, and May 21, 2012) for the child support unit. The form has areas for entries which allow individuals to enter month and year as well as a child support payment amount, and provides spaces for up to six (6) years of payments. Underneath the entry area is a statement which reads:

I do hereby swear and affirm that to the best of my knowledge the above record is an accurate and true account of payments received directly from _____ for payment of support. Interest on any unpaid child support will be calculated by BCSE (Bureau for Child Support Enforcement).

Underneath the statement is a place for the signature to be notarized.

- 9) 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.
- 10) 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.

- 11) 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.
- 12) 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.

13) 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:

- 1st Offense: 1 year
- 2nd Offense: 2 years
- 3rd 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 Defendant clearly was aware of her responsibility to report truthful and accurate information and the penalties involved for failing to do so. She read and signed two applications as well as Rights and Responsibilities forms during the period in question, which clearly informed her of these responsibilities.
- 4) The totality of the evidence supports clearly and convincingly that the Defendant intentionally reported that she had no unearned income during her October 18, 2011 SNAP review interview, when the evidence supports that she received \$200.00 child support on October 1, 2011.
- 5) Therefore, the Department was correct in its determination that the Defendant has committed an IPV by reporting false information about her household's unearned income.

IX. DECISION:

The Agency's proposal to apply a one (1) year Food Stamp disqualification penalty is **upheld**. The Defendant's disqualification penalty period will begin October 1, 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of September 2012.

**Cheryl Henson
State Hearing Officer**