



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

July 26, 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 July 24, 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 IPV. Your disqualification penalty period will begin September 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-1712

**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. The Department requested this hearing on July 12, 2012, and the hearing was convened on July 24, 2012.

It should be noted that this hearing was originally scheduled for September 4, 2012, to allow for timely notice to the Defendant; however, she waived her right to thirty (30) days advance notice so that this hearing could be held on the same date another hearing was conducted, on July 24, 2012. The Defendant indicated this would be more convenient for her.

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
Sam Swisher, Department witness
Ralph Holbrook, Department witness

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

It should be noted that Mr. Holbrook participated in the hearing by conference call.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Defendant committed an intentional program violation 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 dated July 24, 2012
- 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 form dated May 2, 2011
- M-6 Rights and Responsibilities form dated May 2, 2011
- M-7 SNAP application form dated April 5, 2012, and supporting documentation
- M-8 Rights and Responsibilities form dated April 5, 2012
- M-9 Documentation from Department's Child Support Unit
- M-10 West Virginia Income Maintenance Manual §2.2
- M-11 West Virginia Income Maintenance Manual §20.6
- M-12 Notices to Defendant dated July 9, 2012
- M-13 Comments from Department's Child Support Unit computer system

VII. FINDINGS OF FACT:

- 1) The West Virginia Department of Health and Human Resources (Department) submitted a request for an ADH to the Board of Review on June 11, 2012. The Department contends that the Defendant committed an Intentional Program Violation (IPV), and made a fraudulent statement or misrepresentation regarding her household income in order to receive SNAP benefits, and contends that she should be disqualified from participation in SNAP for a period of one (1) year.
- 2) The Department contends that the Defendant intentionally reported that she had no income during her May 2, 2011 SNAP interview (M-5), and again during her April 5, 2012 SNAP interview (M-7), when she was actually receiving \$440.00 monthly child support income.
- 3) The Department presented evidence which supports that the Defendant completed a SNAP application interview (M-5) on or about May 2, 2011, at which time she reported that her household had no income. 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) supports that the Defendant was again interviewed by the Department on April 5, 2012, and reported that her household had no income. She signed the application form (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.
- 5) The Department presented evidence (M-9) in the form of records from its Child Support Unit which includes an "Affidavit of Direct Payments" form signed by the Defendant on June 13, 2012.. The notarized form shows that the Defendant swore she received direct payments from the non-custodial parent from January 2011 through July 2012 in the amount of \$440.00 monthly. Additionally, the Child Support Unit's records of case comments shows that the Department worker, Ralph Holbrook, documented that the Defendant came to the office on that date to complete a direct pay affidavit, and that she told him that the non-custodial parent paid her directly from January 2011 through and including July 2012 in the amount of \$440.00 monthly. Mr. Holbrook testified that he explained to the Defendant at that time that by signing the affidavit, she was swearing that the \$440.00 monthly payments as indicated were made to her from the non-custodial parent.
- 6) The Defendant testified that the non-custodial parent did not make the payments to her as she indicated on the affidavit, and added that Mr. Holbrook told her what to put down on the form even though she told him that the non-custodial parent was only paying her "\$20.00 here and there." The Defendant did not have records of the \$20.00 payments she alleges were made sporadically. Mr. Holbrook testified that he did not tell the Defendant to list the \$440.00 payments and that she did this of her own accord.

7) 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.

8) 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.

9) 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.

10) 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.

11) 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

- 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 income during her May 2011 and April 2012 interviews with the Department, when in fact she was receiving \$440.00 child support monthly from the father of her child. She signed an affidavit (M-9) on June 13, 2012, swearing that she received the \$440.00 monthly payments from January 2011 through July 2012.
- 5) The Department was correct in its determination that the Defendant has committed an IPV by reporting false information about her household 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 September 1, 2012.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of July 2012.

**Cheryl Henson
State Hearing Officer**