



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

September 25, 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 September 18, 2012, for the purpose of determining whether or not 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: 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).

Information submitted at the hearing fails to demonstrate that you intentionally provided false or misleading information about your household composition in order to receive SNAP benefits to which you were not legally entitled.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against you based on an Intentional Program Violation. Furthermore, the Department cannot pursue SNAP repayment for the period of September 2011 through July 2012 based on household composition.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Jennifer Butcher, RI, WVDHHR

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

**IN RE: -----,**

**Defendant,**

**v.**

**ACTION NUMBER: 12-BOR-1941**

**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 September 18, 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  
Jennifer Butcher, Repayment Investigator (RI), WVDHHR

Presiding at the hearing was Thomas E. Arnett, 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 the Supplemental Nutrition Assistance Program (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 Chapters 1.2, 9.1, 10.4 & 20.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- E-1 Benefit Recovery Referral dated 7/19/12
- E-2 West Virginia Income Maintenance Manual Chapter 1.2
- E-3 7 CFR §273.16 USDA Code of Federal Regulations
- E-4 Combined Application and Review Form (CAF) dated 9/14/11
- E-5 Copies of utility bills, vehicle registrations, Defendant's pay stubs and Final Order of Divorce, In The Family Court of ----- County, West Virginia Civil Action No: 11-D-134, Entered on 7/26/11
- E-6 Combined Application and Review Form (CAF) dated 12/7/12
- E-7 Customer Questionnaire [sic] – (not signed or dated)
- E-8 CMCC (Case Comments) dated 2/3/12
- E-9 Combined Application and Review Form (CAF) dated 2/15/12
- E-10 CMCC (Case Comments) dated 5/7/12
- E-11 Order, In The Family Court of ----- County, West Virginia, Civil Action No: 11-D-134, Entered 4/25/12
- E-12 Electronic Mail (E-Mail) correspondence from Melissa Barr to Stacy Beegle dated 6/18/12
- E-13 Bureau for Child Support Enforcement (BCSE) record of address for the Defendant and her ex-husband
- E-14 West Virginia Income Maintenance Manual Chapter 9.1
- E-15 West Virginia Income Maintenance Manual Chapter 2.2
- E-16 Food Stamp (now SNAP) Claim Determination Sheets for 9/13/11 through 7/31/12
- E-17 West Virginia Income Maintenance Manual Chapter 20.6
- E-18 Notification of Intent to Disqualify (IG-BR-44) and Waiver of Administrative Disqualification Hearing (IG-BR-44)
- E-19 West Virginia Income Maintenance Manual Chapter 20.2,C.2
- E-20 West Virginia Income Maintenance Manual Chapter 20.2,E.3
- E-21 West Virginia Income Maintenance Manual Chapter 20.2,F.2.a

## VII. FINDINGS OF FACT:

- 1) A request for an Administrative Disqualification Hearing (ADH) was received by the Board of Review from the West Virginia Department of Health and Human Resources (Department) on August 9, 2012. The Department contends that the Defendant has committed an Intentional Program Violation (IPV) and is recommending that the Defendant be disqualified from participation in the Supplemental Nutrition Assistance Program (SNAP) for a period of one (1) year.
- 2) The Department contends that on three (3) different occasions, the Defendant completed an application for benefits at the Department and withheld information about her ex-husband residing in her home. In Exhibit E-4, the Defendant reported three (3) members in her Assistance Group (AG) – the Defendant and her two children – and that her ex-husband was paying the mortgage while she was in school. The Department contends that while the Defendant and her ex-husband (-----) were divorced on July 26, 2011 (see Exhibit E-5), the utility bills and vehicle registrations (included in Exhibit E-5) - received during the September 13, 2011 application (E-4) - demonstrate the Defendant and her ex-husband were residing together at -----.
- 3) The Department presented evidence that the Defendant completed two subsequent applications for benefits (see Exhibits E-6 and E-7 completed on December 7, 2011, and E-8 completed on February 15, 2012) and again noted that the AG consisted of three (3) members – the Defendant and her two children. The Defendant reported on both of these applications that her ex-husband was paying the mortgage on the residence, but that she was responsible for the utilities.

The Department cited Exhibit E-12, an e-mail (electronic mail) correspondence sent by Melissa Barr, a Repayment Investigator, to Income Maintenance Supervisor Stacy Beegle on June 18, 2012, wherein Ms. Barr reported having a conversation with the Defendant. Ms. Barr indicated in her e-mail that ----- is the father of the Defendant's two children and that the Defendant reported ----- uses the address to receive mail, but that he stays with his parents and "here-and-there." Ms. Barr indicated that she advised the Defendant that she would need confirmation that her ex-husband does not live in the home – this could be confirmed by a statement from his parents or the individual(s) with whom he resides. The Defendant reportedly advised Ms. Barr that her ex-husband would not provide that information because he is very private. Ms. Barr went on to note that when she asked about the name and address of her ex-husband's parents, the Defendant reported that they were not involved in their lives and could not tell the Department anything. The Defendant reported to Ms. Barr that she and her ex-husband are divorced and live "separate" lives, and that he only comes to her residence when she leaves for school to care for the children. Ms. Barr goes on to note that because the Defendant and her ex-husband are the parents of the children and claim the same residence, they must be included in the benefits together.

4) The Department noted that because the Defendant applied for WV WORKS cash assistance in December 2011 (Exhibits E-6 and E-7), she was required to cooperate with the Bureau for Child Support Enforcement to establish child support. In the Order entered by Judge -----, Family Court of ----- County, West Virginia, Civil Action No.: 11-E-134, on April 25, 2012 (Exhibit E-11), the Court noted that child support was not established in the prior Order (Exhibit E-5), as the parties represented an agreement to the Court wherein they had made alternative financial arrangements for the support of the minor children. The Order (E-11) indicates that child support was not previously pursued as ----- was paying all housing and utility expenses, car payments, insurance payments and cell phone bills for the Defendant and the children. The Department's motion to establish child support for the minor children was denied, and subsequent to the Defendant voluntarily agreeing to repay cash assistance received during the period of December 7, 2011 through February 29, 2012, the Department was awarded a decretal judgment in the amount of \$952.

5) Department's Exhibits E-4, E-6 and E-9 include the DFA-RR-1 - the Rights and Responsibilities form completed and signed by the Defendant on the dates of application. The Defendant marked "yes" to item #4 which states:

I understand if I am found (by court action or an administrative disqualification hearing) to have committed an act of intentional program violation, I will not receive Food Stamp benefits as follows: First Offense – one year; Second Offense – two years; Third Offense- permanently. In addition, I will have to repay any benefits received for which I was not eligible.

By signing the DFA-RR-1s, the Defendant certified that she read, understood, and accepted the rights and responsibilities, and that all of the information she provided was true and correct.

6) The Department submitted Exhibit E-16, SNAP/Food Stamp Claim Determination, and noted that because the Defendant was untruthful about her household composition, she received \$5,395 in SNAP benefits to which she was not legally entitled.

7) The Defendant purported that she and her ex-husband entered into an agreement at the time of their divorce indicating that he would not pay child support. She reported this agreement was reached because she and her children could reside in the home until she graduated from nursing school while her ex-husband paid the mortgage and car payment. Because her ex-husband worked afternoon shift, he would come to the house and watch the children through the morning, and leave when the Defendant returned home. This arrangement benefited the entire family, as child care expenses were not incurred, and her ex-husband got to spend time with the children. The Defendant testified that her ex-husband did not return to her residence to sleep after work, and he did not have a room in the residence, although she acknowledged there were occasions when he would work all night and arrive at her house earlier in the morning than normal and remain on the couch until the children awakened him.

- 8) West Virginia Income Maintenance Manual Chapter 9.1 provides that the SNAP AG must include all eligible individuals who both live together and purchase and prepare their meal together. Spouses, individuals who are married to each other under state law, must be in the same AG even if they do not purchase and prepare their meals together. This policy goes on to state that children living with a parent, natural or adopted children, under the age of 22, must be in the same AG as that parent.
- 9) West Virginia Income Maintenance Manual, Chapter 2.2.B states that all SNAP AGs must report changes related to eligibility and benefit amount at application and redetermination.
- 10) West Virginia Income Maintenance Manual, Chapter 1.2 (E):  
The client's responsibility is to provide information about his circumstances so the worker is able to make a correct decision about his eligibility.
- 11) West Virginia Income Maintenance Manual, Chapter 20.2:  
When a AG (benefit group) has been issued more Food Stamps than it was entitled to receive, corrective action is taken by establishing either an Unintentional Program Violation or Intentional Program Violation claim. The claim is the difference between the allotment the client received and the allotment he should have received.
- 12) West Virginia Income Maintenance Manual, Chapter 20.2 (C) (2):  
Once an IPV (Intentional Program Violation) is established a disqualification penalty is imposed on the AG (assistance group) members who committed the IPV. The penalties are as follows: (Chapter 9.1, A, 2, h) 1st Offense: 1 year (Disqualification), 2<sup>nd</sup> Offense: 2 years (Disqualification), 3<sup>rd</sup> Offense: Permanent
- 13) 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.

- 14) Common Chapters Manual 740.22.M states that 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. 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.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy and regulations that govern the SNAP state 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. The SNAP AG must include all eligible individuals who both live together (emphasis added) and purchase and prepare their meals together. The regulations state that there must be clear and convincing evidence that demonstrates the Defendant intentionally committed an Intentional Program Violation.
- 2) Evidence submitted in this case fails to provide clear and convincing evidence that the Defendant committed an Intentional Program Violation. The facts confirm that the Defendant's ex-husband was providing her with monetary assistance by paying the mortgage and other financial expenses until she graduated from school. The Circuit Court took judicial notice of the financial arrangement made between the Defendant and her ex-husband, and felt it appropriate to deny the motion of the Bureau for Child Support Enforcement to establish a child support amount. Because the Defendant's ex-husband planned to occupy the residence once the Defendant graduated from school, and he was able to pick up his mail when he cared for their children, the fact that the Defendant and her ex-husband continued to share a mailing address – the only evidence presented to indicate they were residing together when the Defendant received assistance – does not independently confirm ----- was living at the residence.
- 3) Whereas there is insufficient evidence to confirm the Defendant and her ex-husband were residing together – the basis for which an IPV and repayment were being sought - repayment of SNAP benefits for the period of September 13, 2011, through July 31, 2012, cannot be pursued and a 1 year disqualification cannot be applied.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to apply a one (1) year SNAP disqualification penalty against the Defendant based on an Intentional Program Violation. Furthermore, the Department cannot pursue SNAP repayment for the period of September 2011 through July 2012 based on household composition.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_ Day of September 2012.**

---

**Thomas E. Arnett  
State Hearing Officer**